



(front cover)

**UTAH STATE BOARD OF EDUCATION**

**SPECIAL**

**EDUCATION**

**RULES**

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# INTRODUCTION

This document represents a revision of the previous State Board of Education Special Education Rules, adopted by the Board in May, 1993. These Rules provide requirements to which local education agencies, state-operated programs (including local juvenile and adult correctional facilities and charter schools), and other public and private agencies providing publicly funded education and related services to students with disabilities, must adhere.

These Rules are in compliance with the requirements outlined in the Individuals with Disabilities Education Act (IDEA) 1997 Regulations contained in 34 CFR Parts 300 and 303. Under this act, the State Education Agency (SEA) is responsible for ensuring the following things: (1) that the requirements of the IDEA are carried out, and (2) that each educational program for students with disabilities administered within the state is under the general supervision of special education staff in the Utah State Office of Education (USOE) and meets the education standards of the USOE, including IDEA requirements.

One of the key beliefs in the Utah State Board of Education's 2000 mission statement is that "ALL students are entitled to an appropriate education, characterized by, and adequately funded to provide opportunities for individuals with disabilities to increase their independence and prepare for and obtain employment." The State Board supports the vision that all students can learn and obtain the knowledge and life skills necessary to become a contributing citizen in today's society. The State Board of Education adopted the Utah Agenda for Meeting the Needs of Students with Disabilities in April of 1993. The Agenda, updated yearly as needed, is intended to be a framework for special education in the state and a unifying voice in the education of students with disabilities.

The appendices at the end of these Rules contain references and technical assistance documents useful to special educators and administrators.

It is important that you become familiar with this complete document and refer to it regularly as you provide appropriate and effective services to each student with disabilities.

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**STATE BOARD OF EDUCATION  
SPECIAL EDUCATION RULES**

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# **UTAH STATE BOARD OF EDUCATION SPECIAL EDUCATION RULES**

## **I. GENERAL PROVISIONS.**

### **I.A. PURPOSES.**

The primary purposes of these Rules are to ensure the following actions, consistent with Sections 53A-15-301 through 53A-15-305, Utah Code Annotated, and the Individuals with Disabilities Education Act (IDEA), Public Law 105-17, as amended:

1. Each student with a disability, ages 3 through 21, in Utah, including students with disabilities who have been suspended or expelled from school, who have not graduated from high school with a regular high school diploma, receives a free and appropriate public education that includes special education and related services, as specified on the IEP, designed to meet the student's unique needs, and to prepare them for employment and independent living.
2. The rights of students with disabilities and the rights of their parents are protected.
3. State standards are established for the provision of a free appropriate public education to school-age students with disabilities, as defined in these Rules, I.E.42.
4. The effectiveness of efforts to educate students with disabilities is assessed.
5. A comprehensive, coordinated multidisciplinary/interagency system is provided for conducting public educational programs for school-age students with disabilities in the State of Utah.
6. A system for state reimbursement for disabilities program costs authorized under the school finance law is provided.

### **I.B. AUTHORITY.**

These Rules are authorized under Section 53A-15-301, Utah Code Annotated, Part B of the Individuals with Disabilities Education Act (20 U.S.C. 1401 et. Seq.) as amended, and its implementing regulations, 34 CFR Parts 300 and 303, have been adopted by the Utah State Board of Education.

### **I.C. APPLICABILITY.**

1. These Rules are applicable to all public agencies within the State of Utah and include charter schools and state and local juvenile and adult correctional facilities providing special education and related services for students with disabilities, including students with disabilities who have been suspended or expelled from school, regardless of

whether that agency is receiving funds under Part B. This includes private agencies serving students with disabilities using public funds.

2. Each public agency in the state shall ensure that a free appropriate public education (FAPE) is available to any individual student with a disability, ages 3 through 21, who needs special education and related services, even though the student is advancing from grade to grade.
3. Each public agency in the state is responsible for ensuring that the rights and protections under these Rules are given to students with disabilities referred to or placed in private schools and facilities by that public agency, or placed in private schools by their parents, when FAPE is at issue.

#### **I.D. AMENDMENTS.**

Any proposed changes in these Rules shall be in accordance with the provisions of the Utah Administrative Rulemaking Act.

#### **I.E. DEFINITIONS.**

The terms defined below are found throughout these Rules.

1. **Adaptive behavior.** The effectiveness or degree with which the individual meets the standards of personal independence and social responsibility expected of students of comparable age and cultural group.
2. **Applied technology education (vocational education).** Organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring licensure other than a baccalaureate or advanced degree.
3. **Assistive technology device.** Any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a student with a disability.
4. **Assistive technology service.** Any service that directly assists a student with a disability in the selection, acquisition, or use of an assistive technology device. The term includes:
  - a. Evaluate the needs of a student with a disability, including a functional evaluation of the student in the student's customary environment.
  - b. Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by students with disabilities.
  - c. Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices.

- d. Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs.
  - e. Training or technical assistance for a student with a disability or, if appropriate, that student's family.
  - f. Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of students with disabilities.
5. **Audiology.** This includes:
- a. Identification of children with hearing loss.
  - b. Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing.
  - c. Provision of habilitative activities such as language habilitation, auditory training, speech reading (lip reading), hearing evaluation, and speech conservation.
  - d. Creation and administration of programs for prevention of hearing loss.
  - e. Counseling and guidance of children, parents, and teachers regarding hearing loss.
  - f. Determination of children's needs for group and individual amplification, selecting and fitting appropriate aids, and evaluating the effectiveness of amplification.
6. **Autism.** A developmental disability significantly affecting verbal and non-verbal communication and social interaction, generally evident before age three, that adversely affects educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a student's educational performance is adversely affected primarily because the student has an emotional disturbance, as defined in Rule I.E.7., below. If a student manifests characteristics of the disability category autism after age three, that student could be diagnosed as having autism if the criteria in Rule II.G.1. are satisfied.
7. **Communication disorders (speech/language impairment).** A communication disorder such as stuttering, impaired articulation, language impairment, or a voice impairment that adversely affects a student's educational performance.

8. **Consent.** Consent means that:
- The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language or other mode of communication.
  - The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom.
  - The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time. If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).
9. **Counseling services.** Services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.
10. **Day; business day; school day.**
- Day** means calendar day unless otherwise indicated as business day or school day.
  - Business day** means Monday through Friday, except for federal and state holidays.
  - School day** means any day, including a partial day that students are in attendance at school for instructional purposes. The term school day has the same meaning for all students in school, including students with and without disabilities.
11. **Deafblindness.** A concomitant hearing and visual impairment, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for students with deafness or students with blindness.
12. **Developmental delay.** A significant delay or deficit in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development. For this reason the student needs special education services. This definition applies only to students age three through seven in accordance with eligibility criteria in Rule II.G.5.
13. **Emotional disturbance.** A condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a student's educational performance: an inability to learn that cannot be explained by intellectual, sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or

to students who are socially maladjusted, unless it is determined that they have an emotional disturbance.

14. **Equipment.** Machinery, utilities, built-in equipment, and any necessary enclosures or structures to house the machinery, utilities or equipment; and all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audio-visual instructional materials; telecommunications, sensory and other technological aids and devices; and books, periodicals, documents, and other related materials.
15. **Evaluation.** Procedures used in accordance with these Rules to determine whether a student has a disability, and the nature and extent of the special education and related services that the student needs.
16. **Extended school year services.** Special education and related services that:
  - a. Are provided to a student with a disability:
    - (1) Beyond the normal school year of the LEA.
    - (2) In accordance with the student's IEP.
    - (3). At no cost to the parents of the student.
  - b. Meet the standards of the USOE.
17. **Federal administrative responsibilities.** Any administrative responsibility or obligation established or imposed under Part B of the Individuals with Disabilities Education Act (20 U.S.C. 1401 et. seq.) and its implementing regulations (34 CFR 300) or under the General Education Provisions Act or its implementing regulations (34 CFR 76).
18. **Free appropriate public education (FAPE).** Special education and related services that:
  - a. Are provided at public expense, under public supervision and direction, and without charge.
  - b. Meet the standards of the Utah State Office of Education and Part B of the IDEA.
  - c. Include preschool, elementary school, and secondary school education in Utah.
  - d. Are provided in conformity with an Individualized Education Program (IEP) that meets the requirements of Part B of the IDEA, as well as these Rules.
19. **General curriculum.** The same curriculum as that provided for nondisabled students (the Utah Core Curriculum).

20. **Hearing impairment (deafness/hearing impairment).** “A hearing impairment” is a generic classification of hearing loss including the terms deafness and hearing impairment.
- a. **Deafness.** A hearing impairment so severe that the student is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a student’s educational performance.
  - b. **Hearing impairment.** A hearing impairment, whether permanent or fluctuating, that adversely affects a student’s educational performance, but that is not included under the definition of Deafness.
21. **IDEA.** The Individuals with Disabilities Education Act (20 U.S.C. 1401 et. Seq.) as amended, and its implementing regulations 34 CFR 300 and 303. “IDEA-B” refers to Part B of the act.
22. **IEP (Individualized Education Program).** A written statement for a student with a disability that is developed, reviewed, and revised in accordance with these Rules and Part B of the IDEA.
23. **Intellectual disability.** Significantly below-average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a student’s educational performance.
24. **Least restrictive environment (LRE).** To the maximum extent appropriate, students with disabilities, including students in public or private institutions or other care facilities, are educated with students who are not disabled. Special classes, separate schooling, or other removal of students with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.
25. **Local educational agency (LEA).** The forty Utah school districts, the Utah Schools for the Deaf and the Blind, and public charter schools that are established under state law.
26. **Medical services.** Services that are provided by a licensed physician to determine a student’s medically related disability, that results in the student’s need for special education and related services.
27. **Multiple disabilities.** Concomitant impairments (such as intellectual disability-blindness, intellectual disability-orthopedic impairment, etc.), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deafblindness.



28. **Native language.**
- a. Used with reference to an individual of limited English proficiency, the language normally used by an individual, or in the case of a student, the language normally used by the parents of the student.
  - b. In all direct contact with a student, including evaluation of the student, the language normally used by the student in the home or learning environment.
  - c. For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication).
29. **Occupational therapy.** Services provided by a qualified occupational therapist; and includes:
- a. Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation.
  - b. Improving ability to perform tasks for independent functioning if functions are impaired or lost.
  - c. Preventing, through early intervention, of initial or further impairment or loss of function.
30. **Orientation and mobility services.** Services provided to blind or visually impaired students by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home and community; and includes teaching students the following as appropriate:
- a. Spatial and environmental concepts and use of information received by the senses (such as sound, temperature, and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street).
  - b. To use the long cane to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision.
  - c. To understand and use remaining vision and distance low vision aids.
  - d. Other concepts, techniques, and tools.
31. **Orthopedic impairment.** A severe orthopedic impairment that adversely affects a student's educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

32. **Other health impairment.** Limited strength, vitality or alertness, including a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever and sickle cell anemia that adversely affects a student's educational performance.
33. **Parent.** A natural or adoptive parent, a guardian, but not the state if the student is a ward of the state, a person acting in the place of a parent of a student (such as a grandparent or stepparent with whom the student lives, or a person who is legally responsible for the student's welfare), or a surrogate parent who has been appointed in accordance with these Rules. Consistent with state law, a foster parent may act as a parent under Part B of the IDEA if the following four conditions are met:
- a. The natural parents' authority to make educational decisions on the student's behalf has been extinguished under State law.
  - b. The foster parent has an ongoing, long-term parental relationship with the student.
  - c. The foster parent is willing to make the educational decisions required of parents under these Rules.
  - d. The foster parent has no interest that would conflict with the interests of the student.
34. **Parent counseling and training.**
- a. Assisting parents in understanding the special needs of their child.
  - b. Providing parents with information about child development.
  - c. Helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP.
35. **Personally identifiable.** This information includes:
- a. The name of the student, the student's parent, or other family member.
  - b. The address of the student.
  - c. A personal identifier, such as the student's social security number or student number.
  - d. A list of personal characteristics or other information that would make it possible to identify the student with reasonable certainty.

36. **Physical education.** The development of:
- a. Physical and motor fitness.
  - b. Fundamental motor skills and patterns.
  - c. Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports).
  - d. Includes special physical education, adapted physical education, movement education, and motor development.
37. **Physical therapy.** Services provided by a qualified physical therapist.
38. **Psychological services.** Psychological services include:
- a. Administering psychological and educational tests, and other assessment procedures.
  - b. Interpreting assessment results.
  - c. Obtaining, integrating, and interpreting information about student behavior and conditions relating to learning.
  - d. Consulting with other staff members in planning school programs to meet the special needs of students as indicated by psychological tests, interviews, and behavioral evaluations.
  - e. Planning and managing a program of psychological services, including psychological counseling for students and parents.
  - f. Assisting in developing positive behavioral intervention strategies.
39. **Qualified personnel.** Personnel who have met USOE-approved or USOE-recognized certification, licensing, registration, paraeducators qualification standards, or other comparable requirements that apply to the area in which the individuals are providing special education or related services.
40. **Recreation.**
- a. Assessment of leisure function.
  - b. Therapeutic recreation services.
  - c. Recreation programs in schools and community agencies.
  - d. Leisure education.

41. **Rehabilitation counseling services.** Services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to students with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended.
42. **Related services.** Transportation and such developmental, corrective, and other supportive services determined by an IEP team as required to assist a student with a disability to benefit from special education. Such services include speech\_language pathology; audiology services; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; early identification and assessment of disabilities in students; counseling services, including rehabilitation counseling; orientation and mobility services; interpreters; interveners; and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training.
43. **School-age students with disabilities.** Individuals, ages 3 through 21, who have been determined to be eligible for special education consistent with these Rules.
44. **School health services.** Services provided by a qualified school nurse or other qualified person.
45. **Secondary school.** As used in this part, the term secondary school means a nonprofit institutional day or residential school that provides secondary education, as determined under state law, except that it does not include any education beyond grade 12.
46. **State educational agency (SEA).** The Utah Office of Education (USOE).
47. **Social work services in schools.** Social work services in schools include:
- a. Preparing a social or developmental history on a student with a disability.
  - b. Group and individual counseling with the student and family.
  - c. Working in partnership with parents and others on those problems in a student's living situation (home, school, and community) that affect the student's adjustment in school.
  - d. Mobilizing school and community resources to enable the student to learn as effectively as possible in his or her educational program.
  - e. Assisting in developing positive behavioral intervention strategies.
48. **Special education.** Specially designed instruction, at no cost to the parents, to meet the unique needs of a student with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and instruction in physical education. The term includes speech\_language pathology services

and may include other related services, travel training, and applied technology education, if they meet the definition of special education.

49. **Specially designed instruction.** Adapting, as appropriate to the needs of an eligible student under these Rules, the content, methodology, or delivery of instruction in order to:
- a. Address the unique needs of the student that result from the student's disability.
  - b. Ensure access of the student to the general curriculum, so that he or she can meet the educational standards within the jurisdiction of the LEA that apply to all students.
50. **Specific learning disability.** A disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include students who have learning problems that are primarily the result of visual, hearing, or motor disabilities, of intellectual disabilities of emotional disturbances, or of environmental, cultural or economic disadvantage.
51. **Speech-language pathology services.** This includes:
- a. Identification of students with speech or language impairments.
  - b. Diagnosis and appraisal of specific speech or language impairments.
  - c. Referral for medical or other professional attention necessary for the habilitation of speech or language impairments.
  - d. Provision of speech and language services for the habilitation or prevention of communicative impairments.
  - e. Counseling and guidance of parents, students, and teachers regarding speech and language impairments.
52. **Student with a disability.** A student evaluated in accordance with these Rules as having an intellectual disability, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, an emotional disturbance, an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deafblindness, a multidisability or children age 3 through 7 experiencing developmental delays, and who, by reason thereof, needs special education and related services.

If it is determined, through an appropriate evaluation under these Rules, that a student has one of the disabilities identified above, but only needs a related service and not special education (defined as specially designed instruction), the student is not classified as a student with a disability under these Rules.

If, consistent with the definition of special education under Rule I.A.47, the related service required by the student is considered special education rather than a related service under these Rules, the student would be determined to be a student with a disability.

53. **Supplementary aids and services.** Aids, services, and other supports that are provided in regular education classes or other education-related settings to enable students with disabilities to be educated with nondisabled students to the maximum extent appropriate in accordance with these Rules, including the LRE requirement (Rule III.R.).
54. **Transportation** includes:
  - a. Travel to and from school and between schools.
  - b. Travel in and around school buildings.
  - c. Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a student with a disability.
55. **Traumatic brain injury.** An acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a student's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.
56. **Travel training.** Instruction, as appropriate, to students with significant cognitive disabilities, and any other students with disabilities who require this instruction, to enable them to:
  - a. Develop an awareness of the environment in which they live.
  - b. Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).
57. **Visual impairment.** An impairment in vision that, even with correction, adversely affects a student's educational performance. The term includes both partial sight and blindness.

## **II. STUDENT IDENTIFICATION, LOCATION, AND EVALUATION.**

### **II. A. CHILD FIND SYSTEM.**

1. Consistent with the requirements of Part B of the IDEA and with these Rules, each LEA shall develop policies and procedures to ensure that all students with disabilities residing within the jurisdiction of the LEA, including students with disabilities birth through 21 years of age, and those attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated. This shall include a practical method for determining which students are currently receiving needed special education and related services.
2. The requirements of this section apply to:
  - a. Highly mobile students with disabilities (such as migrant and homeless students).
  - b. Students who are suspected of being a student with disability under these Rules and who are in need of special education and related services, even though they are advancing from grade to grade.

The determination that a student is a “student with a disability” under these Rules must be made on an individual basis, by the group responsible within the student’s LEA for making those determinations.

3. Major components of the Child Find system include:
  - a. LEA implementation and coordination of Child Find activities, including private schools within the LEA’s jurisdiction.
  - b. Provision by the USOE of ongoing technical assistance to LEAs, charter schools, private schools, and other state agencies in implementing the Child Find system.
  - c. Implementation of the statewide data collection system for reporting student information, including federal child count.
  - d. USOE on-site monitoring of Child Find procedures through the regularly scheduled district monitoring process.
  - e. Collaboration and coordination with the State and Local Department of Health, which has responsibility for providing early intervention services for infants and toddlers with disabilities, ages birth through two (Part C program).

The collection and use of data to meet the requirements of this section are subject to the confidentiality of information provisions under these Rules.

## **II. B. REGULAR EDUCATION INTERVENTIONS.**

The LEA must document a history of failed classroom interventions and/or programs, which, however appropriate and correctly implemented, proved ineffective, before referring a student for special education evaluation, including potentially eligible preschool age students who attend Head Start or any other school district-sponsored regular preschool program.

1. The primary purposes of this process shall be to assist in:
  - a. Identifying and establishing interventions and/or programs for students having educational difficulties.
  - b. Evaluating, monitoring, and documenting regular education interventions and/or programs.
  - c. Determining if failure of the interventions is due to a suspected disability.
2. If school personnel determine that referral for special education evaluation is necessary, a record of the results of the interventions implemented, including adjustments made, shall be attached to the referral and reviewed along with the student's previous school performance.
3. Each LEA shall establish a system for managing this process, which may include the use of a school-based teacher assistance team.

## **II. C. INITIAL EVALUATION.**

If school personnel determine that the available regular education interventions and/or programs have been unsuccessful and there is reason to suspect that the student is eligible for special education and related services, the student shall be referred to special education services staff for a comprehensive evaluation.

1. The LEA shall ensure that a full and individual initial evaluation is conducted for each student being considered for special education services to determine if the student is a "student with a disability" under Part B of the IDEA and these Rules, and to determine the educational needs of the student. The results of the evaluation shall be used by the student's IEP team in meeting the IEP requirements in these Rules.
2. Parental requests for evaluation shall be submitted to special education services for review and recommendation. The right of a parent to refer a student for evaluation shall not be denied or delayed by the procedures listed in the Regular Education Interventions section of these Rules. In the case of a parental referral, every effort must be made to implement the regular education intervention procedures, Rule II.B.
3. Each LEA shall have written procedures for making a referral for an individual evaluation and the actions to be taken on the referral.



4. Prior written notice must be provided, and written parental consent for testing must be obtained, before a student is evaluated (see Rule IV). Once parental consent is received by the LEA, the evaluation process must begin within a reasonable period of time.
5. The parents of a student with a disability shall be afforded an opportunity to participate in meetings with respect to the identification, evaluation, educational placement of the student, and the provision of FAPE to the student (see Rule IV.).
6. A student referred from within the school district and being evaluated for the first time may not be placed in special education and/or receive special education and related services prior to the completion of the determination of eligibility for special education and related services and the completion of the IEP process.

## **II. D. EVALUATION PROCEDURES.**

Each LEA shall establish and implement procedures that meet the evaluation requirements of Part of B of the IDEA and these Rules as follows:

1. Tests and other evaluation materials used to assess a student are selected and administered so as not to be discriminatory on a racial or cultural basis.
2. Tests and other evaluation materials are provided and administered in the student's native language or other mode of communication, unless it is clearly not feasible to do so.
3. Materials and procedures used to assess a student with limited English proficiency are selected and administered to ensure that they measure the extent to which the student has a disability and needs special education, rather than measuring the student's English language skills.
4. A variety of assessment tools and strategies are used to gather relevant, functional, and developmental information about the student, including information provided by the parent, and information related to enabling the student to be involved in and progress in the general curriculum (or for a preschool student, to participate in appropriate activities) that may assist in determining:
  - a. Whether the student is a "student with a disability" under Part B of the IDEA and these Rules.
  - b. The content of the student's IEP.
5. Any standardized tests that are given to a student have been validated for the specific purpose for which they are used and are administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the tests.
6. If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions (e.g., the qualifications of the person administering the test, or the method of test administration) must be included in the evaluation report.

7. Tests and other evaluation materials must include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.
8. Tests are selected and administered to ensure that if a test is administered to a student with impaired sensory, manual or speaking skills, the test results accurately reflect the student's aptitude or achievement level or other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).
9. No single procedure may be used as the sole criterion for determining whether a student is a "student with a disability" and for determining an appropriate educational program for the student.
10. The student must be assessed in all areas related to the suspected disability including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.
11. In evaluating each student with a disability under these Rules, the evaluation must be sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified.
12. The LEA must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.
13. The LEA must use assessment tools and strategies that provide relevant information that directly assists evaluation team members in determining the educational needs of the student.
14. The LEA shall administer tests and other evaluation materials as required to produce the data the evaluation team determines are needed.

## **II. E. DETERMINATION OF NEEDED EVALUATION DATA.**

1. As part of an initial evaluation (if appropriate) and as part of any reevaluation, the evaluation team, including individuals required on the IEP team, including the parents, and other qualified professionals, as appropriate, shall:
  - a. Review existing evaluation data on the student including:
    - (1) Evaluations and information provided by the parents of the student.
    - (2) Current classroom-based assessments and observations.
    - (3) Observations by teachers and related service providers.
  - b. On the basis of that review and input from the student's parents, identify what additional data, if any, are needed to determine:

- (1) Whether the student has a particular category of disability according to these Rules or, in the case of a reevaluation, whether the student continues to have such a disability.
  - (2) The present levels of performance and educational needs of the student.
  - (3) Whether the student needs special education and related services, or in the case of reevaluation of a student, whether the student continues to need special education and related services.
  - (4) Whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set out in the IEP and to participate, as appropriate, in the general curriculum.
2. The evaluation team described in this section may conduct its review without a meeting.
3. Conduct a reevaluation of each student in accordance with these Rules, if conditions warrant a reevaluation, or if the student's parent or teacher requests a reevaluation, but at least once every three years.
4. Provide the results of any reevaluations to the student's IEP team to be used in reviewing and, as appropriate, revising the student's IEP.
5. As part of the reevaluation, if the evaluation team decides no additional data are needed to determine whether the student continues to be eligible for special education and related services:
  - a. The LEA must provide written notice to the student's parents:
    - (1) Of that determination and the reasons for it.
    - (2) Of the right of the parents to request an assessment to determine whether, for purposes of services under these Rules, the student continues to be a student with a disability.
  - b. The LEA is not required to conduct an assessment for purposes of determining the student's continuing eligibility, unless requested to do so by the student's parents.

## **II. F. DETERMINATION OF ELIGIBILITY.**

1. Upon completing the administration of tests and other evaluation materials, a group of qualified professionals and the parent of the student must determine whether the student is a "student with a disability" as defined in Part B of the IDEA and these Rules. When interpreting evaluation data for this purpose and determining the educational needs of the student, the LEA shall:

- a. Ensure that the student may not be determined to be a “student with a disability” if the primary factor for such a determination is lack of instruction in reading or math or limited English proficiency, and the student does not otherwise meet the eligibility criteria under these Rules.
  - b. Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior. All data sources must be documented and carefully considered.
  - c. Provide the parent with a copy of the evaluation report and documentation of determination of eligibility.
- 2. If a determination is made by the team that the student meets the eligibility criteria in Rule II.F.1., an Individualized Education Program (IEP) shall be developed for the student within thirty (30) calendar days. Special education and related services may not begin and special education placement may not be made before the IEP is developed.
  - 3. Before determining that a student is no longer eligible for special education and related services, the LEA must evaluate the student with a disability in accordance with Rules II.D. and II.E. An evaluation is not required before termination of a student’s eligibility under Part B of the IDEA due to graduation with a regular high school diploma or reaching the age of twenty-two.

## **II. G. CATEGORICAL CRITERIA AND TESTS.**

This section specifies the criteria, by category, for determining eligibility for a student with disabilities under Part B of the IDEA, including evaluation procedures.

### **1. AUTISM.**

#### **a. DEFINITION.**

A developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age 3, that adversely affects the student’s educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a student’s educational performance is adversely affected primarily because the student has an emotional disturbance (as defined in Rule II.G.2.). If a student manifests characteristics of the disability category autism after age 3, that student could be diagnosed as having autism if the criteria in this section are satisfied.

#### **b. ELIGIBILITY CRITERIA.**

A multidisciplinary team of qualified professionals and the student’s parents determine eligibility as defined above.

- (1) The autism must adversely affect the student's educational performance.
- (2) The student with autism must require special education and related services.
- (3) The team must determine that autism is the student's primary disability, although the student may exhibit characteristics of other disability conditions such as an emotional disturbance or intellectual disability.
- (4) To be eligible under this category, the student must exhibit significant impairments in social interaction, communication, and/or repetitive and stereotyped patterns of behavior.
  - (a) Significant impairment in social interaction includes, but is not limited to:
    - 1) Failure to use appropriate nonverbal behaviors like eye contact, facial expression, body postures, and other social gestures.
    - 2) Failure to develop peer relationships appropriate to developmental level.
    - 3) A lack of spontaneous initiation to share interests, enjoyment, or achievements with other people.
  - (b) Significant impairment in communication includes, but is not limited to:
    - 1) Delay in or lack of spoken language with no attempt to communicate through alternate modes such as gesture or mime.
    - 2) In individuals with adequate speech, an inability to initiate or sustain a conversation with others.
    - 3) Stereotyped and repetitive use of language or peculiar language.
    - 4) Lack of varied, spontaneous make-believe play, or social imitative play, appropriate to development level.
  - (c) Significant restricted, repetitive, and stereotyped patterns of behavior, interests, and activities includes, but is not limited to:
    - 1) Restricted patterns that are atypical either in intensity or focus.

- 2) Rigid adherence to specific, nonfunctional routines or rituals.
  - 3) Stereotyped and repetitive motor mannerisms (e.g. hand or finger flapping or twisting, or complex whole-body movement).
  - 4) Persistent preoccupation with people, events, or objects.
- (d) The requirements of Rule II.F. (Determination of Eligibility) must be met.

c. **EVALUATION.**

- (1) Multiple measures (formal and informal) including an autism checklist/rating scale must be used to assess intellectual, academic, communicative, social, and adaptive functioning.
- (2) The student's prior medical and developmental history from a qualified health professional must be on record regarding specific syndromes, health concerns, medication, and any information deemed necessary for planning the student's education program.
- (3) The requirements of Rules II.D. (Evaluation Procedures) and II.E. (Determination of Needed Evaluation Data) must be met.

**2. COMMUNICATION DISORDER (SPEECH/LANGUAGE IMPAIRMENT).**

a. **DEFINITION.**

A communication disorder is a speech or language impairment such as stuttering, impaired articulation, language impairment, or a voice impairment that adversely affects a student's educational performance.

b. **ELIGIBILITY CRITERIA.**

A team of qualified professionals and the student's parents, including a qualified speech language pathologist, SLP (sometimes referred to as a communication disorder specialist or CDS), determines eligibility as defined above.

- (1) The communication disorder must adversely affect the student's educational performance.
- (2) The student with the communication disorder must require special education and related services.
- (3) Students who qualify in disability categories other than that of communication disorder may qualify for communication disorder services; however, in order for the student to be classified as having a

communication disorder, the team must determine that the communication disorder is the student's primary disability.

- (4) In order for a student whose primary home language is other than English to be eligible for classification as communication disordered, the team (including an SLP/CDS) must determine that the communication disorder exists in the student's primary language and is not the result of learning English as a second language.
- (5) The student with an Orofacial Myofunctional Disorder or OMD (formerly called Tongue Thrust), may be served **only if there is an associated communication disorder.**
- (6) Some students with mild hearing impairments may be classified as communication disordered if the manifestation of the disability is only as a communication disorder and the services of a teacher of the hearing impaired are not required.
- (7) The requirements of Rule II.F. (Determination of Eligibility) must be met.

c. **EVALUATION.**

Multiple measures (formal and informal) are required for a student suspected of having a communication disorder (primary disability or requiring related services).

- (1) The student must be evaluated by a qualified SLP/CDS using assessment instruments and procedures that are appropriate for the diagnosis and appraisal of a communication disorder.
- (2) Documentation must be provided that indicates that the student has a disorder in listening, reasoning, and/or speaking to such a degree that special education is needed.
- (3) A complete battery of assessments (e.g., intellectual, physical, or adaptive behavior) may not be needed to determine that a communication disorder exists. Needed assessments are determined by the team.
- (4) The requirements of Rules II.D. (Evaluation Procedures) and II.E. (Determination of Needed Evaluation Data) must be met.

### **3. DEAFBLINDNESS.**

#### **a. DEFINITION.**

Concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for students with deafness or students with blindness.

#### **b. ELIGIBILITY CRITERIA.**

While there must be prior documentation by qualified professionals that a student has concomitant hearing and visual impairments the combination of which meet the definition above, only a team of qualified professionals and the student's parents determine eligibility under the deafblind category.

- (1) The deafblindness must adversely affect the student's educational performance.
- (2) The student with deafblindness must require special education and related services.
- (3) The team must determine that the student is a student with deafblindness, but the student may have other disabling conditions in addition to the vision and hearing losses.
- (4) A combination of the following must exist:
  - (a) Vision loss—Must include one or both of the following:
    - 1) Visual impairment that, with or without correction, adversely affects a student's ability to access visual information and to develop visual skills for educational performance. This may include partial/low vision or blindness.
    - 2) Functional blindness or cortical visual impairment: When the visual structures are present and working, but the student does not attend, examine, utilize, or accurately process visual information from the environment on a consistent basis.
  - (b) Hearing loss—Must include one or both of the following:
    - 1) Hearing impairment that, with or without amplification, adversely affects a student's ability to access auditory information and the development of language and



communication for educational performance. This may include hard of hearing or deafness.

- 2) Functional hearing loss, cortical deafness, or central auditory processing dysfunction: When the hearing structures are present and working, but the student does not attend, respond, localize, or accurately process information about the environment on a consistent basis.

c. **EVALUATION.**

Multiple measures (formal and informal) must be used to assess vision and hearing and all areas of suspected deficits. The evaluation must include and take into consideration the impact of the combined vision and hearing losses. Evaluation must be both clinical and functional assessment.

- (1) Areas of evaluation must include:

- (a) Audiological evaluation.

- 1) Clinical—Audiometric testing may include:

- a) Puretone audiometric testing yielding threshold results; aided threshold evaluations yielding aid threshold results; speech audiometric tests yielding speech discrimination scores and speech reception thresholds; and proper functioning, fitting and follow-up of hearing aids.
- b) Otoacoustic Emittance Testing (OAE).
- c) Auditory Brainstem Response (ABR) audiometry.

- 2) Functional assessment of auditory abilities.

- (b) Vision evaluation.

- 1) Ophthalmological testing.

- a) Clinical assessment of visual acuity, visual field, fixation and movement, refractive errors, and health of the eye structure.
- b) Additional diagnostic tests such as Visual Evoked Response (VER), Magnetic Resonance Imaging (MRI), and Electroretinogram (ERG).

- 2) Functional assessment of visual abilities.

d. **EDUCATIONAL EVALUATION.**

- (1) The team must consider and evaluate, if appropriate:
  - (a) Language and communication needs.
  - (b) Current and future needs for instruction in Braille or the use of Braille.
  - (c) Orientation and Mobility (O&M) needs.
  - (d) Accommodations and modifications necessary for the student to be able to access the general curriculum and other activities.
  - (e) Assistive technology needs.
- (2) The requirements of Rules II.D (Evaluation procedures) and II.E. (Determination of Needed Evaluation) must be met.

4. **DEVELOPMENTAL DELAY.**

a. **DEFINITION.**

A significant delay or deficit in one or more of the following areas: (1) physical development, (2) cognitive development, (3) communication development, (4) social or emotional development, or (5) adaptive development.

For this reason, the student needs special education and related services. This definition applies only to student's ages 3 through 7, in accordance with these Rules.

LEAs that choose to use the classification of Developmental Delay must conform to the state's definition of Developmental Delay, including the age range adopted by the state.

b. **ELIGIBILITY CRITERIA.**

The team of qualified professionals and the student's parents determine eligibility as defined above.

- (1) The team must determine that the student's primary disability is not one of the other disability categories. When adequate evaluation data are available, children must be classified in one of the other specific disabilities categories.
- (2) The developmental delay must adversely affect the student's educational performance.

- (3) The student with developmental delay must require special education and related services.
- (4) Students who are eligible for services include students who have been diagnosed as having a significant delay or deficit in one or more of the following areas: (a) cognitive development, (b) physical/motor development, (c) language/speech development, (d) social/emotional development, or (e) self-help skills/adaptive behavior.
- (5) Significant delays are defined as:
  - (a) 1.5 standard deviations below the mean, or at or below the 7<sup>th</sup> percentile in three areas of development.
  - (b) 2.0 standard deviations below the mean, or at or below the 2<sup>nd</sup> percentile in two areas of development.
  - (c) 2.5 standard deviations below the mean, or at or below the 1<sup>st</sup> percentile in one area of development.
- (6) The requirements of Rule II.F. (Determination of Eligibility) must be met.

c. **EVALUATION.**

- (1) Multiple measures (formal and informal) must be used to assess the areas of suspected delay.
- (2) Assessments selected must be appropriate for students ages 3 through 7 and based upon a student's sensory limits.
- (3) The requirements of Rules II.D. (Evaluation Procedures) and II.E. (Determination of Needed Evaluation Data) must be met.

**5. EMOTIONAL DISTURBANCE.**

a. **DEFINITION.**

A condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a student's educational performance:

- (1) An inability to learn that cannot be explained by intellectual, sensory, or health factors.
- (2) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
- (3) Inappropriate types of behavior or feelings under normal circumstances.

- (4) A general pervasive mood of unhappiness or depression.
- (5) A tendency to develop physical symptoms or fears associated with personal or school problems. The term includes schizophrenia. The term does not apply to students who are socially maladjusted, unless it is determined that they have an emotional disturbance.

“Emotional disturbance” is used as a generic term to cover two types of behavior difficulties which are not mutually exclusive but which adversely affect educational performance:

- (1) **Externalizing** refers to behavior problems that are directed outwardly by the student towards the social environment and usually involves behavioral excesses.
- (2) **Internalizing** refers to a class of behavior problems that are directed inwardly and often involve behavioral deficits.

**b. ELIGIBILITY CRITERIA.**

A team of qualified professionals and the student’s parents determine eligibility as defined above.

- (1) The emotional disturbance must adversely affect the student’s educational performance.
- (2) The student with the emotional disturbance must require special education and related services.
- (3) The team must determine that an emotional disturbance is the primary disability.
- (4) Before classifying a student as emotionally disturbed, it must be determined that the student is not behaving as an emotionally disturbed student because of: (a) an inappropriate classroom discipline system, (b) breakdown of classroom discipline, (c) inappropriate academic instruction or materials, (d) vision or hearing impairments, or (e) other medical conditions.
- (5) Disclaimer information may include data in cumulative records, interviews, classroom observations and/or evaluations.
- (6) The requirements of Rule II.F. (Determination of Eligibility) must be met.

**c. EVALUATION.**

Multiple measures (formal and informal) must be used to assess behavioral, social, and academic areas and must include the following:

- (1) Documentation which demonstrates that the behavior has been exhibited over a long period of time and to a marked degree that adversely affects the student's educational performance.
- (2) Educational observations of the student which include at least three (3) fifteen-minute observations on referring behavior pinpoints. A student who is not disabled and who is not being referred must be selected and observed in the same setting on the same behavior pinpoints as the referred student for comparison. An assigned member of the evaluation team other than the student's regular classroom teacher will make the educational observations. (These observations are required only for initial evaluation for classification, not for reevaluation, but may be determined needed by the IEP team.)
- (3) Complete documentation in the student's records in each of the following areas:
  - (a) Academic performance as evidenced by achievement tests, classroom academic screenings and tests, report cards, cumulative records, etc.
  - (b) Social/adaptive behavior checklists or rating scales, which provide information regarding the student's past and present patterns of interaction with peers, family, teachers, adults, etc.
  - (c) Behaviors for which the student is referred.
- (4) The requirements of Rules II.D. (Evaluation Procedures) and II.E. (Determination of Needed Evaluation Data) must be met.

**6. HEARING IMPAIRMENT/DEAFNESS.** A "hearing impairment" is a generic classification of hearing loss, including the terms "deafness" and "hearing impairment".

**a. DEFINITIONS.**

- (1) **DEAFNESS.** A hearing impairment so severe that the student is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a student's educational performance.
- (2) **HEARING IMPAIRMENT.** A hearing impairment, whether permanent or fluctuating, which adversely affects a student's educational performance, but that is not included under the definition of deafness.

**b. ELIGIBILITY CRITERIA.**

A team of qualified professionals and the student's parents determine eligibility under the Deafness or Hearing Impairment category.

- (1) The hearing impairment must adversely affect the student's educational performance.
- (2) The student with the hearing impairment must require special education and related services.
- (3) The team must determine that the hearing impairment is the primary disability.
- (4) Measurements in terms of decibels or percentages, discrimination scores, type of hearing loss, site of lesion, etc., serve only as guidelines in the eligibility process.
- (5) Before classifying a student as having deafness or a hearing impairment, the team must determine whether learning needs exist, other than those directly related to the loss of hearing.
- (6) Before classifying a student as deaf or having a hearing impairment, the team must take into account whether a central nervous system impairment or other impairments may be the cause of the hearing loss.
- (7) The requirements of Rule II. F. (Eligibility Determination) must be met.

c. **EVALUATION.**

Multiple measures (formal and informal) are required for a student suspected of having a hearing impairment.

- (1) Areas of evaluation must include:
  - (a) Audiological evaluation.
    - 1) Audiometric testing may include: puretone audiometric testing, yielding threshold results; aided threshold evaluations, yielding aid threshold results; speech audiometric tests, yielding speech discrimination scores and speech reception thresholds; and proper functioning, fitting, and follow-up of hearing aids.
    - 2) Auditory functioning may include: awareness, attention, localization, discrimination, memory, brainstem-evoked response, immittance, and otoacoustic emissions.
  - (b) Language growth and development (signed, spoken, or written), must be evaluated by qualified personnel using assessment instruments and procedures that are appropriate for the diagnosis and appraisal of the suspected hearing impairment.

- (c) Speech and language evaluation.
  - 3) Speech intelligibility may be evaluated by: phonetic evaluation, suprasegmental features (vocalization, vocal duration, vocal intensity, vocal pitch), and articulation of segmental features (vowels, diphthongs, consonants, blends).
  - 4) Linguistic Evaluation (vocalizations as specified in (c)1) above, within linguistic structure).
  - 5) Language and communication mode.
- (d) Academic achievement.
- (2) Other areas of evaluation to consider, as appropriate, include:
  - (a) Intellectual ability. When intellectual ability is assessed, results must be interpreted by qualified personnel.
  - (b) Adaptive behavior, as gathered from parents and school staff.
- (3) The requirements of Rules II.D. (Evaluation Procedures) and II.E. (Determination of Needed Evaluation Data) must be met.

## **7. INTELLECTUAL DISABILITY.**

### **a. DEFINITION.**

Significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a student's educational performance.

### **b. ELIGIBILITY CRITERIA.**

A team of qualified professionals and the student's parents determine eligibility as defined above.

- (1) The intellectual disability must adversely affect the student's educational performance.
- (2) The student with the intellectual disability must require special education and related services.
- (3) The team must determine that an intellectual disability is the primary disability.
- (4) Intellectual, academic, and adaptive assessment results are expected to demonstrate consistently low profiles across measures.

- (5) The requirements of Rule II.F. (Eligibility Determination) must be met.

c. **EVALUATION.**

Multiple measures (formal and informal) are required for a student suspected of having an intellectual disability. Evaluation requires:

- (1) The student's language and motor skills must be considered in the selection of evaluation instruments.
- (2) Intellectual evaluation.
  - (a) An individual major test of intelligence must be administered by a qualified examiner. Documentation must be provided which indicates significant subaverage intellectual functioning (generally two standard deviations) on the full-scale score.
  - (b) If verbal or performance scores are significantly discrepant from each other, further evaluation must be conducted to determine the reason for the discrepancy and to ensure that the student is actually manifesting an intellectual disability.
- (3) Documentation of academic achievement as measured by achievement tests, classroom academic screenings and tests, report cards, cumulative records, etc.
- (4) Documentation of significant deficits in adaptive behavior as measured by standardized and/or curriculum-based assessments must be gathered from parents and school staff.
- (5) The requirements of Rules II.D. (Evaluation Procedures) and II.E. (Determination of Needed Evaluation Data) must be met.

**8. MULTIPLE DISABILITIES.**

a. **DEFINITION.**

Concomitant impairments (such as intellectual disability-blindness; intellectual disability-orthopedic impairment, etc.), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deafblindness.

b. **ELIGIBILITY CRITERIA.**

A team of qualified professionals and the student's parents determine eligibility as defined above.



- (1) The multiple disability must adversely affect the student's educational performance.
- (2) The student with a multiple disability must require special education and related services.
- (3) The requirements of Rule II.F. (Eligibility Determination) must be met.

c. **EVALUATION.**

Multiple measures (formal and informal) must be used to assess cognitive ability, academic skills, adaptive skills, language and communication, social functioning (such as self-help and independent living skills), vocational skills, and sensory/motor skills. The evaluation process is determined by the evaluation team and must include a combination of tests, interviews with those familiar with the student, and observations conducted in settings familiar to the student.

- (1) Cognitive ability must be assessed by a qualified examiner. Traditional approaches to assessing cognitive ability may be of limited value for some students who are suspected of having a multiple disability.
- (2) The use of assisted and augmentative communication and motor systems must be considered during the evaluation and documented.
- (3) The student's prior medical history, from a qualified health professional, must be on record regarding specific syndromes, special health problems (e.g., tracheotomy), medication, and long-term medical prognosis for the individual.
- (4) The following sensory/motor areas must be considered for evaluation: (a) abnormal tactile or joint sensation, (b) abnormal muscle tone and movement, (c) lack of integration of primitive reflexes, (d) lack of balance or coordination, (e) organization of sequential motor movement, (f) motor skills, or (g) a combination of any of the above.
- (5) Where deficits in adaptive behavior are suspected, they must be measured and documented on standardized and/or curriculum-based assessments with input from parents and school staff.
- (6) The requirements of Rules II.D. (Evaluation Procedures) and II.E. (Determination of Needed Evaluation Data) must be met.

## **9. ORTHOPEDIC IMPAIRMENT.**

### **a. DEFINITION.**

A severe orthopedic impairment that adversely affects a student's educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

### **b. ELIGIBILITY CRITERIA.**

A team of qualified professionals and the student's parents determine eligibility as defined above.

- (1) The orthopedic impairment must adversely affect the student's educational performance.
- (2) The student with the orthopedic impairment must require special education and related services.
- (3) The team must determine that the orthopedic impairment is the student's primary disability.
- (4) The requirements of Rule II.F. (Eligibility Determination) must be met.

### **c. EVALUATION.**

- (1) The student's prior medical history, from a qualified health professional, must be on record regarding specific syndromes, health concerns, medication, and any information deemed necessary for planning the student's educational program.
- (2) Multiple measures (formal and informal) must be used to assess all areas of the suspected deficits (e.g., educational, adaptive, behavioral, physical).
- (3) The requirements of Rules II.D. (Evaluation Procedures) and II.E. (Determination of Needed Evaluation Data) must be met.

## **10. OTHER HEALTH IMPAIRMENT.**

### **a. DEFINITION.**

Limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia,

nephritis, rheumatic fever, and sickle cell anemia, that adversely affects a student's educational performance.

**b. ELIGIBILITY CRITERIA.**

A team of qualified professionals and the student's parents determine the eligibility as defined above.

- (1) The health impairment must adversely affect the student's educational performance.
- (2) The student with the health impairment must require special education and related services.
- (3) The team must determine that the other health impairment is the student's primary disability.
- (4) The requirements of Rule II.F. (Eligibility Determination) must be met.

**c. EVALUATION.**

- (1) The student's prior medical history, from a qualified health or mental health professional, must be on record regarding specific syndromes, health concerns, medication, and any information deemed necessary for planning the student's educational program.
- (2) Multiple measures (formal and informal) must be used to assess all areas of suspected deficits (e.g., educational, adaptive, behavioral, physical).
- (3) The requirements of Rules II.D. (Evaluation Procedures) and II.E. (Determination of Needed Evaluation Data) must be met.

**11. SPECIFIC LEARNING DISABILITIES.**

**a. DEFINITION.**

A disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include students who have learning problems that are primarily the result of visual, hearing, or motor disabilities, of intellectual disabilities, of emotional disturbances, or of environmental, cultural, or economic disadvantage.

**b. ELIGIBILITY CRITERIA.**

- (1) A team of qualified professionals, including the student's parents and the following individuals, determines eligibility as defined above:

- (a) The student's regular teacher, or if the student does not have a regular teacher, a regular classroom teacher qualified to teach a student of his or her age.
  - (b) For a student of less than school age, an individual qualified by the USOE to teach a student of his or her age.
  - (c) At least one person qualified to conduct individual diagnostic examinations of students, such as a school psychologist, speech-language pathologist, or reading specialist.
- (2) The learning disability must adversely affect the student's educational performance.
  - (3) The student with the learning disability must require special education and related services.
  - (4) The team must determine that the learning disability is the primary disability.
  - (5) The student must score above the intellectual disabilities range on individually administered tests of intellectual ability.
  - (6) The student does not achieve commensurate with his/her age and ability levels if provided with learning experiences appropriate for the student's age and ability levels in one or more of the areas listed under C.2. in this section.
  - (7) A severe discrepancy must exist between achievement and intellectual ability in one or more of the areas listed under C.2. in this section.
  - (8) The severe discrepancy between achievement and intellectual ability must not be primarily the result of a visual, hearing, or motor disability, intellectual disability, emotional disturbance, or environmental, cultural, or economic disadvantage.
  - (9) The requirements of Rule II.F. (Eligibility Determination) must be met.

c. **EVALUATION.**

Multiple measures (formal and informal) are required for a student suspected of having a learning disability.

- (1) Intellectual ability must be determined using one of the reliable, valid, individually administered, and standardized instruments listed in the current LD Estimator Disk Manual.

- (2) Achievement must be measured in one or more of the seven learning areas identified in Part B of the IDEA.

These include: (a) oral expression, (b) listening comprehension, (c) written expression, (d) basic reading skills, (e) reading comprehension, (f) mathematics calculation, and (g) mathematical reasoning.

- (3) An observation of the student's academic performance in the regular classroom setting must be conducted by at least one team member other than the student's regular teacher. In the case of a student not in school, or less than school age, a team member must observe the student in an appropriate environment for a student of that age.
- (4) Each identified deficit must be confirmed by at least two measures of achievement (e.g., a standardized instrument and a classroom observation in the area(s) of suspected disability). One measure must be an individually administered standardized instrument that specifically assesses the achievement area.
- (5) Scores from the standardized measures in one or more areas of achievement must be compared to the score of intellectual ability. This comparison must use the LD Estimator Disk to determine whether a severe discrepancy exists. Results of the comparisons must be documented.
- (6) The requirements of Rules II.D. (Evaluation Procedures) and II.E. (Determination of Needed Evaluation Data) must be met.
- (7) The team must prepare a written report of the results of the evaluation. The report must include statements of the following:
  - (a) Documentation that the student meets the state eligibility requirements as a student with a specific learning disability.
  - (b) The basis for making the determination.
  - (c) The relevant behavior noted during the observation of the student and the relationship of that behavior to the student's academic functioning.
  - (d) A description of the instructional environment in which the observation took place.
  - (e) The educationally relevant medical findings, if any.
  - (f) Whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services.

- (g) The determination of the team concerning the effects of environmental, cultural, or economic disadvantage.
- (h) The written signature of each team member certifying whether the team report reflects his or her conclusion. If it does not reflect his or her conclusion, the team member must submit a separate statement presenting his or her conclusions.

## **12. TRAUMATIC BRAIN INJURY.**

### **a. DEFINITION.**

An acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a student's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.

### **b. ELIGIBILITY CRITERIA.**

While there must be prior documentation by a physician that a student has an acquired injury to the brain caused by an external physical force, a team of qualified professionals and the student's parents determine eligibility.

- (1) The traumatic brain injury must adversely affect the student's educational performance.
- (2) The student with the traumatic brain injury must require special education and related services.
- (3) The team must determine that traumatic brain injury is the student's primary disabling condition.
- (4) The requirements of Rule II.F. (Eligibility Determination) must be met.

### **c. EVALUATION.**

- (1) Multiple measures (formal and informal) must be used to assess all areas of suspected deficits. Informal assessment and diagnostic teaching must be part of the full evaluation. Data that are gathered must include information on the student's developmental history and/or pre-injury learning.

- (2) The student's prior medical history, from a qualified health professional, must be on record regarding specific syndromes, health concerns, medication, and any information deemed necessary for planning the student's education program.
- (3) Although other evaluations could be considered, the following areas must be considered for evaluation: (a) augmentative communication assistive service needs, (b) rehabilitative team evaluations, (c) self- help/adaptive behavior, (d) academic, (e) speech/language, (f) social skills and classroom behavior, (g) intellectual/cognitive, (h) vocational (secondary students), and (i) gross/fine motor skills.
- (4) The requirements of Rules II.D. (Evaluation Procedures) and II.E. (Determination of Needed Evaluation Data) must be met.

### **13. VISUAL IMPAIRMENT.**

#### **a. DEFINITION.**

An impairment in vision that, even with correction, adversely affects a student's educational performance. The term includes both partial sight and blindness.

#### **b. ELIGIBILITY.**

While the student's vision history, from a qualified eye care professional, must be on record, a team of qualified professionals and the student's parents determine eligibility as defined above.

- (1) The visual impairment must adversely affect the student's educational performance.
- (2) The student with a visual impairment requires special education and related services.
- (3) The team must determine that the visual impairment is the student's primary disability.
- (4) The requirements of Rule II.F. (Eligibility Determination) must be met.
- (5) When classifying a student as visually impaired, the IEP team must consider whether other impairments interfere with the comprehension of visual and/or auditory stimuli.

#### **c. EVALUATION.**

- (1) A description of the student's visual impairment and visual capabilities must be on record from a qualified eye care professional.

- (2) Multiple measures (formal and informal) must be used to assess all areas of suspected deficits (e.g., educational, adaptive, behavioral, physical).
- (3) A qualified professional must assess:
  - (a) The kind and extent of instruction needed, based on the student's present level of performance, including the functioning level of the student in adjusting to visual problems and gaining educational and social successes.
  - (b) The student's current and future need for instruction in Braille or the use of Braille.
- (4) Orientation and Mobility (O&M) must be assessed if the student is determined to be blind or visually impaired.
- (5) The requirements of Rules II.D. (Evaluation Procedures) and II.E. (Determination of Needed Evaluation Data) must be met.



### **III. SERVICE DELIVERY.**

#### **III. A. INDIVIDUALIZED EDUCATION PROGRAM (IEP).**

Each LEA shall develop policies and procedures for the implementation of these IEP requirements consistent with Part B of the IDEA and the Utah Special Education Rules.

#### **III. B. WHEN IEPs MUST BE IN EFFECT.**

1. At the beginning of each school year, each LEA shall have an Individualized Education Program (IEP) in effect for each student with a disability ages 3 through 21 within its jurisdiction. An IEP is a written statement for a student with a disability that is developed, reviewed, and revised in a meeting in accordance with these Rules.
2. An Individualized Education Program (IEP) must:
  - a. Be in effect before special education and related services are provided to an eligible student.
  - b. Be implemented as soon as possible following the IEP meeting in which it is developed.

**NOTE:** It may be appropriate to have a short delay in implementing the IEP only when:

- (1) The IEP meetings occur at the end of the school year or during the summer, and the IEP team determines that the student does not need special education and related services until the next school year begins.
  - (2) When there are circumstances that require a short delay in the provision of services (e.g., finding a qualified service provider, or making transportation arrangements for the student).
3. The student's IEP must be accessible to each regular education teacher, special education teacher, related service provider, and other service providers who are responsible for its implementation for the specific child.
4. Each teacher and provider described in paragraph 3 of this section must be informed of:
  - a. His or her specific responsibilities related to implementing the student's IEP.
  - b. The specific accommodations, modifications, and supports that must be provided for the student in accordance with the IEP.

### **III. C. DIAGNOSTIC IEPs AND TRANSFER STUDENTS WITH IEPs.**

1. An “eligible” student with a disability may be temporarily placed in a program as part of the evaluation process, before the IEP is finalized, to assist an LEA in determining the appropriate placement for the student. In order for a temporary placement to be made, the following conditions must be met:
  - a. Prior written notice must be given and parental consent obtained.
  - b. An interim IEP must be developed which describes the special education services to be provided and evaluations to be completed.
  - c. An IEP meeting must be conducted prior to the end of the diagnostic period, in order to finalize the IEP.
  - d. The temporary diagnostic placement of an eligible student with a disability in a program, as part of the evaluation process, shall not exceed thirty (30) days.
2. If a student with a disability who has been receiving special education from one LEA transfers to another LEA in the state, the receiving LEA has an ongoing responsibility to ensure that the student receives FAPE while continued eligibility is determined by the receiving LEA.
  - a. The receiving LEA must ensure that the student has a temporary diagnostic or permanent IEP in effect before providing special education and related services. The receiving LEA may meet this responsibility by either adopting the IEP the sending agency developed for the student or by developing a new temporary or permanent IEP for the student.
  - b. Before the student’s IEP is finalized, the receiving LEA may provide interim services agreed upon by both the parents and the receiving LEA, and as documented in a temporary IEP.
  - c. If the parents and the receiving LEA are unable to agree on an interim IEP and placement, the receiving LEA must implement the old IEP to the extent possible until a new IEP is developed and implemented.
  - d. If it is determined by the team that the student is not eligible for special education and related services (Rule II.F.), the receiving LEA is not required to conduct an IEP meeting, but must provide parents with prior written notice of the determination and follow the requirements of Rule IV.D.
3. In general, the receiving LEA is required to conduct an IEP meeting, but it would not be necessary if:
  - a. A copy of the student’s current IEP is available.

- b. The parents indicate that they are satisfied with the current IEP.
  - c. The receiving LEA determines that the current IEP is appropriate and can be implemented as written.
4. If the student's current IEP is not available or if either the receiving LEA or the parent believes that it is not appropriate, the receiving LEA must develop a new IEP through appropriate procedures as soon as possible after the student enrolls in the receiving LEA.

### **III. D. LEA RESPONSIBILITY FOR IEP MEETINGS.**

- 1. Each LEA is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising the IEP of a student with a disability, ages 3 through 21, consistent with these Rules.
- 2. Within a reasonable period of time from the LEA's receipt of parental consent to an initial evaluation of a student, each LEA shall ensure that:
  - a. The student is evaluated.
  - b. If determined eligible under these Rules, special education and related services are made available to the student in accordance with an IEP.
- 3. In meeting the requirement in number 2 above, a meeting to develop an IEP for the student must be conducted within 30 days of a determination that the student needs special education and related services.

### **III. E. IEP TEAM MEMBERSHIP.**

The LEA shall ensure that the IEP team for each student with a disability includes:

- 1. The parents of the student.
- 2. At least one regular education teacher of the student (if the student is or may be participating in the regular education environment).
- 3. At least one special education teacher of the student or, if appropriate, at least one special education provider of the student.
- 4. A representative of the LEA who:
  - a. Is knowledgeable about the availability of resources of the LEA.
  - b. Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students with disabilities.
  - c. Is knowledgeable about the general curriculum.

An LEA may designate another LEA member of the IEP team to also serve as the LEA representative, if the above criteria are satisfied.

5. An individual who can interpret the instructional implications of evaluation results, who may be another member of the team described in this section.
6. At the discretion of the parent or the LEA, other individuals who have knowledge or special expertise regarding the student, including related services personnel or other service providers as appropriate. The determination of the knowledge or special expertise of any individual described in this section shall be made by the party (parents or LEA) who invited the individual to be a member of the IEP team. This may include an authorized representative from USDB, when the need for USDB services are anticipated or needed.
7. If appropriate, the student.
8. If a purpose of the IEP meeting will be consideration of transition services needs, needed transition services, or both, the LEA shall invite a student of any age to attend. If the student does not attend, the LEA shall take steps to ensure that the student's preferences and interests are considered.
9. The LEA shall also invite a representative of any other agency that is likely to be responsible for providing or paying for transition services. If an agency invited to send a representative to a meeting does not do so, the LEA shall take other steps to obtain participation of the other agency in the planning of any transition services.

### **III. F. PARENT PARTICIPATION.**

1. Each LEA shall take steps to ensure that one or both of the parents of a student with a disability are present at each IEP meeting, or are afforded the opportunity to participate, including:
  - a. Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend.
  - b. Scheduling the meeting at a mutually agreed on time and place.
2. If neither parent can attend, the LEA shall use other methods to ensure parent participation, including individual or conference telephone calls.
3. A meeting may be conducted without a parent in attendance if the LEA is unable to convince the parents that they should attend. In this case, the **LEA must have a record of its attempts to arrange a mutually agreed on time and place**, such as:
  - a. Detailed records of telephone calls made or attempted and the results of those calls.

- b. Copies of correspondence sent to the parents and any responses received.
  - c. Detailed records of visits made to the parent's home or place of employment and the results of those visits.
- 4. The LEA shall take whatever action is necessary to ensure that the parent understands the proceedings at the IEP meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.
- 5. The parents of a student with a disability are expected to be equal participants along with school personnel in developing, reviewing, and revising the IEP for their student. This is an active role in which the parents:
  - a. Provide critical information regarding the strengths of their child and express their concerns for enhancing the education of their child.
  - b. Participate in the discussion about the student's need for special education and related services and supplementary aids and services.
  - c. Join with the other participants in deciding how the student will be involved and progress in the general curriculum and participate in state- and district-wide assessments, and what services the LEA will provide to the student and in what setting.
- 6. The LEA shall give the parents a copy of the IEP, without charge.

### **III. G. NOTICE OF IEP MEETINGS.**

- 1. The specific notice procedure used to notify parents is left to the discretion of the LEA, but the LEA must maintain a written record of its efforts to contact parents.
- 2. The notice must indicate the purpose, time, and location of the meeting and who will be in attendance. The notice must also inform the parents of the provisions under III.E.6. relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the student.
- 3. For a student with a disability, beginning at age 14, or younger, if appropriate, the notice must also:
  - a. Indicate that a purpose of the meeting will be the development of a statement of the transition services needs of the student.
  - b. Indicate that the LEA will invite the student.
- 4. For a student with a disability, beginning at age 16, or younger, if appropriate, the notice must:

- a. Indicate that a purpose of the meeting is the consideration of needed transition services for the student.
  - b. Indicate that the LEA will invite the student.
  - c. Identify any other agency that will be invited to send a representative.
5. The LEA shall provide notice of the IEP meeting to both the student and the parents for students who have reached the age of majority, or are emancipated and have not been declared incompetent by the courts. (See Rule IV.W.)

### **III. H. DEVELOPMENT, REVIEW, AND REVISION OF THE IEP.**

Nothing in this section requires the IEP team to include information under one component of a student's IEP that is already contained under another component of the student

- 1. Development of the IEP.
  - a. In developing each student's IEP, the IEP team shall consider:
    - (1) The strengths of the student and the concerns of the parents for enhancing the education of their child.
    - (2) The results of the initial or most recent evaluation of the student and, as appropriate, the results of the student's performance on any general state- or district-wide assessments.
  - b. The IEP team, in conducting a meeting to review and, if appropriate, revise a student's IEP, shall consider the factors described below:
    - (1) In the case of a student whose behavior impedes his or her learning or that of others, consider, if appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior. When making decisions on interventions for decreasing student behavior, the IEP team is referred to the selection of "Least Restrictive Behavioral Interventions" (LRBI), for use with Students with Disabilities. The purpose of the LRBI is to provide guidance for making decisions on the use of interventions for decelerating behavior.
    - (2) In the case of a student with limited English proficiency, consider the language needs of the student as these needs relate to the student's IEP.
    - (3) In the case of a student who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the student's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the student's future needs for instruction in Braille or the use of

Braille), that instruction in Braille or the use of Braille is not appropriate for the student.

- (4) Consider the communication needs of the student, and in the case of a student who is deaf or hard of hearing, consider the student's language and communication needs, opportunities for direct communications with peers and professional personnel in the student's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the student's language and communication mode.
    - (5) Consider whether the student requires assistive technology devices and services in order to receive Free and Appropriate Public Education (FAPE). Assistive technology devices and assistive technology services for students with disabilities may be provided as special education, related services, or, in the case of students with disabilities to be educated in regular classes, as supplementary aids and services.
    - (6) On a case-by-case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP team determines that the child needs access to those devices in order to receive FAPE.
    - (7) Consider whether the student requires ESY services in accordance with Rule III.M.
  - c. If, in considering the special factors described in III.H.1.b. above, the IEP team determines that a student needs a particular device or services for educational purposes (including an intervention, accommodation, or other program modification) in order for the student to receive FAPE, the IEP team must include a statement to that effect in the student's IEP.
  - d. The IEP, not the disability classification, determines the services to be provided.
- 2. Each LEA shall ensure that the IEP team reviews the student's IEP periodically, but not less than annually, to determine whether the annual goals for the student are being achieved, and revises the IEP as appropriate to address:
  - a. Any lack of expected progress toward the annual goals described in the IEP and in the general curriculum, if appropriate.
  - b. The results of any reevaluation conducted.
  - c. Information about the student provided to, or by, the parents.
  - d. The student's anticipated needs.
  - e. Other matters.

3. The regular education teacher of the student with a disability, as a member of the IEP team, must to the extent appropriate, participate in the development, review, and revision of the student's IEP, including assisting in:
  - a. The determination of appropriate positive behavioral interventions and strategies for the student.
  - b. The determination of supplementary aids and services, program modifications, or supports for school personnel that will be provided for the student consistent with the IEP.
4. A single, coordinated education and treatment plan shall be developed for each student with a disability who requires special services from both the public schools and other state agencies. It is not necessary, however, for the plan to be limited to a single agency's form or forms jointly developed by the agencies. See Rule VI.I. for additional information on interagency cooperation.

### **III. I. CONTENT OF THE IEP.**

The IEP for each student must include:

1. A statement of the student's present levels of educational performance, including:
  - a. How the student's disability affects the student's involvement and progress in the general curriculum.
  - b. For a preschool student, as appropriate, how the disability affects the student's participation in appropriate activities. Appropriate activities in this context, refers to age-relevant developmental abilities or milestones that typically developing children of the same age would be performing or would have achieved.
2. A statement of measurable annual goals, including benchmarks or short-term objectives, related to:
  - a. Meeting the student's needs that result from the student's disability to enable the student to be involved in and progress in the general curriculum (i.e., the same curriculum as for nondisabled children); or for preschool students, as appropriate, to participate in appropriate activities.
  - b. Meeting each of the student's other educational needs that result from the
3. A statement of the special education and related services and supplementary aids and services to be provided to the student, or on behalf of the student, and a statement of the program modifications or supports for school personnel that will be provided for the student:



- a. To advance appropriately toward attaining the annual goals.
  - b. To be involved and progress in the general curriculum in accordance with these Rules, and to participate in extracurricular and other nonacademic activities.
  - c. To be educated and participate with other students with disabilities and nondisabled students in the activities described in these Rules.
4. An explanation of the extent, if any, to which the student will not participate with nondisabled students in the regular class and in the activities described in this Rule.
5. A statement of any individual modifications in the administration of state- or district-wide assessments of student achievement that are needed in order for the student to participate in the assessment. If the IEP team determines that the student will not participate in a particular state- or district-wide assessment of student achievement (or part of an assessment), a statement of:
  - a. Why that assessment is not appropriate for the student.
  - b. How the student will be assessed.
6. The projected date for the beginning of the services and modifications described in this Rule and the anticipated frequency, location, and duration of those services and modifications.
7. A statement of:
  - a. How the student's progress toward the annual goals described in this Rule will be measured.
  - b. How the student's parents will be regularly informed (through such means as periodic report cards), at least as often as parents are informed of their nondisabled students' progress of:
    - (1) Their student's progress toward the annual goals.
    - (2) The extent to which that progress is sufficient to enable the student to achieve the goals by the end of the year.
8. A statement of transition services.
  - a. For each student, beginning at age 14 (or younger if determined appropriate by the IEP team), and updated annually, a statement of the transition service needs of the student under the applicable components of the student's IEP that focuses on the student's courses of study (such as participation in advanced-placement courses or a vocational education program).

- b. For each student, beginning at age 16, (or younger if determined appropriate by the IEP team), a statement of needed transition services for the student, including, if appropriate, a statement of the interagency responsibilities or any needed linkages.
- 9. Beginning at least one year before a student's 18<sup>th</sup> birthday, the IEP must include a statement that the student has been informed of his or her rights under Part B of the IDEA, if any, that will transfer to the student on reaching the age of 18, consistent with these Rules (see Rule IV.V.).
- 10. When a specific accommodation is necessary for a student to have access to his or her regular education, such an accommodation may be documented on a separate Section 504 accommodation plan and/or the IEP.
- 11. The signatures and titles of all IEP meeting participants and the date each one signed.

### **III. J. TRANSITION SERVICES.**

- 1. For purposes of these Rules, "transition services" means a coordinated set of activities for a student with a disability that:
  - a. Are designed within an outcome-oriented process, that promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation.
  - b. Are based on the individual student's needs, taking into account the student's preferences and interests.
  - c. Includes:
    - (1) Instruction.
    - (2) Related services.
    - (3) Community experiences.
    - (4) The development of employment and other post-school adult living objectives.
    - (5) If appropriate, acquisition of daily living skills and functional vocational evaluation.
  - d. May be special education, if provided as specially designed instruction, or related services, if required to assist a student with a disability to benefit from special education.

2. As used in these Rules, “participating agency” means a state or local agency other than the LEA responsible for the student’s education that is financially and legally responsible for providing transition services to the student. Agency responsibilities for transition services are as follows:
  - a. Any participating agency, including a state vocational rehabilitation agency, is not relieved of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.
  - b. If a participating agency, other than the LEA, fails to provide the transition services described in the IEP in accordance with these Rules, the LEA shall reconvene the IEP team to identify alternative strategies to meet the transition objectives for the student set out in the IEP.

### **III. K. PHYSICAL EDUCATION.**

Physical education services, specially designed if necessary, must be made available to every student with a disability receiving FAPE. Each student with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled students unless:

1. The student is enrolled full time in a separate facility.
2. The student needs specially designed physical education as prescribed in the student’s IEP.

If specially designed physical education is prescribed in a student’s IEP, the LEA responsible for the education of that student shall provide the services directly or make arrangements for those services to be provided through other public or private programs.

The LEA responsible for the education of a student with a disability who is enrolled in a separate facility shall ensure that the student receives appropriate physical education services in compliance with these Rules.

### **III. L. ASSISTIVE TECHNOLOGY.**

1. Each LEA shall ensure that assistive technology devices or assistive technology services, or both, are made available to a student with a disability if required as part of the student’s special education, related services, or supplementary aids and services as specified in these Rules.
2. On a case-by-case basis, the use of school-purchased assistive technology devices in a student’s home or in other settings is required if the student’s IEP team determines that the student needs access to those devices in order to receive FAPE.

### **III. M. EXTENDED SCHOOL YEAR SERVICES (ESY).**

1. Extended school year services are special education and related services that are provided to a student with a disability: (a) beyond the normal school year of the LEA, (b) in accordance with the student's IEP, (c) at no cost to the parents of the student, and (d) meet the standards of the USOE.
2. Each LEA shall ensure that extended school year services are available as necessary to provide FAPE, consistent with these Rules.
3. Extended school year services must be provided **only if** a student's IEP team determines, on an individual basis through the IEP process, that the services are necessary for the provision of FAPE to the student.
4. In implementing ESY requirements, the LEA may **not**:
  - a. Limit extended school year services to particular categories of disability.
  - b. Unilaterally limit the type, amount, or duration of those services.

### **III. N. STUDENTS WITH DISABILITIES CONVICTED AS ADULTS AND INCARCERATED IN ADULT PRISONS.**

The obligation to make FAPE available (including special education/related services under IDEA-Part B and these Rules) to all students with disabilities applies to students age 18 through 21, who are incarcerated in an adult correctional system, with the following exceptions:

1. The IEP team of a student with a disability, who is convicted as an adult under state law and incarcerated in an adult prison, may modify the student's IEP or placement if the state has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated. In this case the IEP and LRE requirements do not apply with respect to these modifications.
2. Requirements that do **not** apply to the content of IEPs for students with disabilities who are convicted as adults under state law and incarcerated in adult prisons are:
  - a. Participation in state- or district-wide assessment of student achievement.
  - b. Transition planning and services with respect to students whose eligibility under IDEA Part B will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

### **III. O. STUDENTS WITH DISABILITIES IN PUBLIC CHARTER SCHOOLS.**

1. Students with disabilities who attend public charter schools, and their parents, retain all rights under Part B of the IDEA and these Rules.

2. If the public charter school is established as an LEA that receives Part B funds under the IDEA, the public charter school is responsible for ensuring that requirements of Part B of the IDEA and these Rules are met.
3. If the public charter school is a school of an LEA that receives Part B funds under the IDEA and includes other public schools:
  - a. The LEA is responsible for ensuring that the requirements under Part B of the IDEA and these Rules are met.
  - b. The LEA must have on file with the USOE information to demonstrate that the LEA will:
    - (1) Serve students with disabilities attending those charter schools in the same manner as it serves students with disabilities in its other schools.
    - (2) Provide funds under Part B of the IDEA to those charter schools in the same manner as it provides those funds to its other schools.

### **III. P. STUDENTS IN 24-HOUR RESIDENTIAL LIVING FACILITIES.**

1. The responsibility for the provision of special education and related services to a student with disabilities placed in a 24-hour residential setting (group home, apartment, Intermediate Care Facility for Mental Retardation (ICFMR), etc.) rests with the school district within which the residential setting is located. If residential placement for these students is requested to be provided with public education funding, the district of the parents' residence is responsible for responding to this request.
2. If placement in a public or private residential program is necessary to provide special education and related services to a student with a disability, the educational program, including non-medical care and room and board, must be at no cost to the parents of the student.

### **III. Q. IEP ACCOUNTABILITY.**

1. Each LEA must provide special education and related services to students with disabilities in accordance with their IEPs and make a good faith effort to assist the student to achieve the goals and objectives or benchmarks listed in the IEP. However, Part B of the IDEA does not require that any LEA, teacher, or other person be held accountable if a student does not achieve the growth projected in the annual goals and benchmarks or objectives.
2. Nothing in this Rule limits a parent's right to ask for revisions of the student's IEP or to invoke due process procedures if the parent believes that the efforts required in this section are not being made.

### **III. R. LEAST RESTRICTIVE ENVIRONMENT (LRE).**

Each LEA shall establish policies and procedures which meet the Least Restrictive Environment (LRE) requirements under Part B of the IDEA and these Rules. The following requirements must be met for all students with disabilities, ages 3 through 21:

1. General. Each LEA shall ensure that:
  - a. To the maximum extent appropriate, students with disabilities, including students in public or private institutions or other care facilities, are educated with students who are not disabled.
  - b. Special classes, separate schooling, or other removal of students with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.
  - c. Each student with disabilities will participate with nondisabled students, to the maximum extent appropriate to the needs of that student, in nonacademic and extracurricular services and activities. Nonacademic and extracurricular services and activities may include meals, recess periods, counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the LEA, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the LEA and assistance in making outside employment available.
  - d. Each LEA shall take steps to provide nonacademic and extracurricular services and activities in the manner to afford students with disabilities an equal opportunity for participation in those services and activities.
2. Continuum of Alternative Placements:
  - a. In developing the delivery system for special educational services under the least restrictive environment requirement, each LEA shall ensure that a continuum of alternative placements is available to meet the needs of students with disabilities for special education and related services.
  - b. The continuum must include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. Specific examples of alternative placements include: Supplementary services provided in conjunction with regular classroom placement, itinerant services, resource rooms, self-contained classes in regular schools or self-contained placement in a resource room, special day schools, residential learning centers, home- and/or hospital-based instruction, and/or other settings.
3. Placements. In determining the educational placement of a student with a disability, including a preschool student with a disability, each LEA shall ensure that:

- a. The placement decision is made by a group of persons including the student's parents, and other persons knowledgeable about the student, the meaning of the evaluation data, and the placement options.
  - b. The educational placement of each student with disabilities shall be individually determined at least annually and be based on the student's IEP.
  - c. The placement is made in conformity with the LRE provisions of these Rules and is as close as possible to the student's home.
  - d. Unless the IEP of a student with a disability requires some other arrangement, the student is educated in the school which that student would normally attend if nondisabled.
  - e. Consideration is given to any potential harmful effect on the student or the quality of services that student needs.
  - f. A student with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.
- 4. Program Options. Each LEA shall take steps to ensure that its students with disabilities have available to them the variety of educational programs and services available to nondisabled students in the area served by the LEA, including: art, music, industrial arts, consumer and homemaking education, and vocational education.
  - 5. Students in public or Private Institutions. Each LEA, through its placement and IEP procedures, shall ensure that students placed by the LEA in public or private institutions are placed in the least restrictive environment. Implementation of this policy is further described in Rules III.U. and III.V.
  - 6. The Utah State Office of Education shall ensure the implementation of the least restrictive environment provisions through its technical assistance/training and monitoring activities (see Rules VI.B., C., and G.). If there is evidence that an LEA makes placements that are inconsistent with the LRE requirements, the USOE will:
    - a. Review the LEA's justification for its actions.
    - b. Assist in planning and implementing any necessary corrective actions.

### **III. S. PARENT INVOLVEMENT IN PLACEMENT DECISIONS.**

- 1. Each LEA shall ensure that the parents of each student with a disability are members of any group that makes decisions on the educational placement of their student. (See Rule IV.B.)

2. In implementing this requirement, each LEA shall use procedures for parent involvement in placement decisions consistent with those used for parent participation in IEP meetings (see Rule III.F.).
3. If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their student, the LEA shall use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing (see Rule III.F.).



4. A group may make a placement decision without the involvement of the parents, if the LEA is unable to obtain the parents' participation in the decision. In this case, the LEA must have a record of its attempts to ensure their involvement, including information that is consistent with the requirements for conducting an IEP meeting without a parent in attendance (see Rule III.F.).
5. The LEA shall make reasonable efforts to ensure that the parents understand, and are able to participate in, any group discussions relating to the educational placement of their student, including arranging for an interpreter for parents with deafness, or whose native language is other than English.

### **III. T. STUDENTS WITH DISABILITIES IN PRIVATE SCHOOLS PLACED OR REFERRED BY LEAs.**

1. If a student with a disability is placed in or referred to a private school or facility by an LEA as a means of providing special education and related services, the LEA must assure that:
  - a. The services provided are in conformance with an IEP that meets the requirements of these Rules.
  - b. The services provided are at no cost to the parents.
  - c. The private school or facility meets all of the Utah State Office of Education standards that apply to education provided by the LEAs, including requirements under IDEA-B.
  - d. The student has all of the rights of a student with a disability who is served by an LEA.
  - e. The USOE Special Education Compliance Officer is notified of the placement in writing, so as to monitor the facility as necessary, to ensure compliance with these Rules.
2. The USOE shall monitor compliance with these requirements through procedures such as written reports, on-site visits, parent questionnaires, and the district monitoring process.
3. The LEA will be responsible to disseminate copies of applicable USOE standards to each private school or facility to which an LEA has referred or placed a student with a disability.
4. The USOE will provide an opportunity for representatives of those private schools and facilities to participate in the development and revision of USOE standards that apply to them.

5. Developing IEPs.
  - a. Before an LEA places a student with a disability in or refers a student to a private school or facility, the LEA shall initiate and conduct a meeting to develop an IEP for the student in accordance with these Rules.
  - b. The LEA shall ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the agency shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.
6. Reviewing and revising IEPs.
  - a. After a student with a disability enters a private school or facility, any meetings to review and revise the student's IEP may be initiated and conducted by the private school or facility at the discretion of the placing LEA.
  - b. If the private school or facility initiates and conducts these meetings, the LEA shall ensure that the parents and an LEA representative:
    - (1) Are involved in any decisions about the student's IEP.
    - (2) Agree to any proposed changes in the programs before those changes are implemented.
7. Responsibility. Even if a private school or facility implements a student's IEP, responsibility for compliance with these Rules remains with the placing LEA and the USOE.

### **III. U. STUDENTS WITH DISABILITIES ENROLLED IN PRIVATE SCHOOL BY THEIR PARENTS WHEN FAPE IS AT ISSUE.**

1. An LEA is not required to pay for the cost of education, including special education and related services, of a student with a disability at a private school or facility if the LEA made FAPE available to the student and the parents elected to place the student in a private school or facility. However, the LEA shall include that student in the population whose needs are addressed, consistent with Rule III.V.
2. Disagreements between a parent and an LEA regarding the availability of a program appropriate for the student and the question of financial responsibility are subject to the due process procedures described in these Rules.
3. If the parents of a student with a disability who previously received special education and related services under the authority of an LEA enroll the student in a private preschool, elementary, or secondary school without the consent of or referral by the LEA, a court or a hearing officer may require the LEA to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the LEA had not made FAPE available

to the student in a timely manner prior to the enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court, even if it does not meet the state standards that apply to education provided by the LEAs, if the LEA did not make FAPE available.

4. The cost of reimbursement described in item 3 of this Rule may be reduced or denied if:
  - a. At the most recent IEP meeting that the parents attended prior to removal of the student from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the LEA to provide FAPE to their student, including stating their concerns and their intent to enroll their student in a private school at public expense.
  - b. At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the student from the public school, the parents did not give written notice to the LEA of the information described in item 4.a. above; or
  - c. Prior to the parents' removal of the student from the public school, the LEA informed the parents, through the notice requirements described in Rule IV.E., of its intent to evaluate the student (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the student available for the evaluation; or
  - d. Upon a judicial finding of unreasonableness with respect to actions taken by the parents.
5. Notwithstanding the notice requirement in item 4., above, the cost of reimbursement may not be reduced or denied for failure to provide the notice if: (a) the parent is illiterate and cannot write in English, (b) compliance with this section would likely result in physical or serious emotional harm to the student, (c) the school prevented the parent from providing the notice, or (d) the parents had not received notice from the LEA of the notice requirement in this section.

### **III. V. STUDENTS WITH DISABILITIES ENROLLED BY THEIR PARENTS IN PRIVATE SCHOOLS.**

1. Students covered by this Rule are students with disabilities enrolled by their parents in private schools, or facilities other than those students covered under Rule III.T.
2. **Child find.** Each LEA must locate, identify, and evaluate all private school students with disabilities, including religious school students with disabilities residing in the jurisdiction of the LEA, in accordance with these Rules. The activities undertaken to carry out this responsibility for private school students with disabilities must be comparable to activities undertaken for students with disabilities in public schools. Each LEA shall consult with appropriate representatives of private school students with disabilities on how to carry out the activities described in this Rule.

3. **Provision of services.** To the extent consistent with their number and location in the state, provision must be made for the participation of private school students with disabilities in the program assisted or carried out under Part B of the IDEA and these Rules, by providing them with special education and related services in accordance with this Rule.
4. The USOE shall ensure that, in accordance with this Rule, a services plan is developed and implemented for each private school student with a disability who has been designated to receive special education and related services under these Rules.
5. **Expenditures.** In order to meet the requirements of this Rule, each LEA must spend the following on providing special education and related services to private school students with disabilities:
  - a. For students ages 3 through 21, an amount that is the same proportion of the LEA's total subgrant under Part B of the IDEA as the number of private school students with disabilities ages 3 through 21 residing in its jurisdiction is to the total number of students with disabilities in its jurisdiction ages 3 through 21.
  - b. For students ages 3 through 5, an amount that is the same proportion of the LEA's total subgrant under the district's preschool grant as the number of private school students with disabilities ages 3 through 5 residing in its jurisdiction is to the total number of students with disabilities in its jurisdiction ages 3 through 5.
6. **Child count.** Each LEA shall:
  - a. Consult with representatives of private school students in deciding how to conduct the annual count of the number of private school students with disabilities.
  - b. Ensure that the count is conducted on December 1 of each year.
  - c. The child count must be used to determine the amount that the LEA must spend on providing special education and related services to private school students with disabilities in the next subsequent fiscal year.
  - d. Expenditures for child find activities may not be considered in determining whether the LEA has met the requirements of this Rule.
  - e. LEAs are not prohibited from providing services to private school students with disabilities in excess of those required by this Rule.
7. **No individual right to special education and related services.** No private school student with a disability has an individual right to receive some or all of the special education and related services that the student would receive if enrolled in a public school. Decisions about the services that will be provided to private school students with disabilities must be made in accordance with items 8 through 12 of this Rule.

8. **Consultation with representatives of private school students with disabilities.** Each LEA shall consult, in a timely and meaningful way, with appropriate representatives of private school students with disabilities in light of the funding under this Rule, the number of private school students with disabilities, the needs of private school students with disabilities, and their location, to decide: (a) which students will receive services, (b) what services will be provided, (c) how and where the services will be provide, and (d) how the services provided will be evaluated.
9. **Genuine opportunity.** Each LEA shall give appropriate representatives of private school students with disabilities a genuine opportunity to express their views regarding each matter that is subject to the consultation requirements in this Rule.
10. **Timing.** The consultation required by item 8 of this section must occur before the LEA makes any decision that affects the opportunities of private school students with disabilities to participate in services under this Rule.
11. **Decisions.** The LEA shall make the final decisions with respect to the services to be provided to eligible private school students.
12. **Services Plan.** If a student with a disability is enrolled in a religious or other private school and will receive special education or related services from an LEA, the LEA shall:
  - a. Initiate and conduct meetings to develop, review, and revise a services plan for the student in accordance with item 13 of this Rule.
  - b. Ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the LEA shall use other methods to ensure participation by the private school, including individual or conference telephone calls.
13. **Services provided.**
  - a. The services provided to private school students with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools.
  - b. Private school students with disabilities may receive a different amount of services than students with disabilities in public schools.
  - c. No private school student with a disability is entitled to any service or to any amount of a service the student would receive if enrolled in a public school.
  - d. Each private school student with a disability who has been designated to receive services must have a services plan that describes the specific special education and related services that the LEA will provide to the student in light of the services that the LEA has determined it will make available to private school students with disabilities.

- e. The services plan must, to the extent appropriate:
  - (1) Meet the IEP content requirement (Rule III.I.) with respect to the services provided.
  - (2) Be developed, reviewed, and revised consistent with the IEP provisions in Rule III.H.
- 14. **Location of services.** Services provided to private school students with disabilities may be provided on-site at a student's private school, including a religious school, and/or in an LEA facility.
- 15. **Transportation.**
  - a. If necessary for the student to benefit from or participate in the services provided under this Rule, a private school student with a disability must be provided transportation: (1) from the student's school or the student's home to a site other than the private school; and (2) from the service site to the private school, or the student's home, depending on the timing of the services.
  - b. LEAs are not required to provide transportation from the student's home to the private school.
  - c. The cost of the transportation described in item 15.a. above may be included in calculating whether the LEA has met the expenditure requirements under item 5. of this Rule.
- 16. **Due process.**
  - a. **Due process inapplicable.** The procedures for conducting a due process hearing under Rule IV. do not apply to complaints that an LEA has failed to meet the requirements of this section, including the provision of services indicated on a student's services plan.
  - b. **Due process applicable.** The procedures for conducting a due process hearing under Rule IV. do apply to complaints that an LEA has failed to meet the child find requirements, including the requirements for evaluation and determination of eligibility under these Rules.
- 17. **State complaints.** Complaints that an LEA has failed to meet the requirements of this section may be filed under the state's complaint procedures as specified in Rule IV.G.

18. **Separate classes prohibited.** An LEA may not use funds available under Part B of the IDEA (including preschool) for classes that are organized separately on the basis of school enrollment or religion of the students if:
- a. The classes are at the same site.
  - b. The classes include students enrolled in public schools and students enrolled in private schools.
19. **Requirement that funds not benefit a private school.** An LEA may not use funds provided under Part B of the IDEA (including preschool funds) to finance the existing level of instruction in a private school or to otherwise benefit the private school. The LEA shall use funds provided under Part B of the IDEA to meet the special education needs of students enrolled in private schools, but not for the needs of the private school, or the general needs of the students enrolled in the private school.
20. **Use of public School Personnel.** An LEA may use funds provided under Part B of the IDEA (including preschool funds) to make public personnel available in other than public facilities to the extent necessary to provide services specified under this Rule for private school students with disabilities, and if those services are not normally provided by the private school.
21. **Use of private school personnel.** An LEA may use funds provided under Part B of the IDEA (including preschool funds) to pay for the services described in this Rule and provided by any employee of a private school if the employee performs the services outside of his or her regular hours of duty, and the employee performs the services under public supervision and control.
22. **Property, equipment and supplies.**
- a. An LEA must keep title to and exercise continuing administrative control of all property, equipment, and supplies that the LEA acquires with funds under a preschool grant or Part B of the IDEA for the benefit of private school students with disabilities.
  - b. The LEA may place equipment and supplies in a private school for the period of time needed for the program.
  - c. The LEA shall ensure that the equipment and supplies placed in a private school are used only for Part B purposes, and can be removed from the private school without remodeling the private school facility.
  - d. The LEA shall remove equipment and supplies from a private school if the equipment and supplies are no longer needed for Part B purposes, or if removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes.

- e. No funds under Part B of the IDEA may be used for repairs, minor remodeling, or construction of private school facilities.

### **III. W. HOMEBOUND AND HOSPITALIZED SERVICE PATTERNS FOR STUDENTS WITH DISABILITIES.**

1. The homebound and hospitalized service pattern is designed for identified students with disabilities who are permanently or temporarily homebound or hospitalized, the primary purpose of which is something other than the student's educational needs. Instructional services available through this service pattern are intended for identified students with disabilities who, for reasons of health, accident, injury, substance abuse, or other treatment, (including psychiatric and mental health), are homebound or hospitalized.
2. Subsequent referrals of homebound and hospitalized students for evaluation and eligibility determination for special education services must be made to the home district. The home district maintains responsibility for the evaluation, classification, and development of the Individualized Education Program (IEP).
3. Students served as homebound or hospitalized must be evaluated and classified according to one of the disability conditions as described in these Rules. Classification of the student as eligible under one of the disability categories must follow the approved regulations for evaluating and determining eligibility according to the criteria for the particular classification (see Rules II.F. and II.G.). The services can begin as soon as possible, although the student must have an expected absence of at least two weeks.
4. The teacher of the homebound or hospitalized student should maintain contact with the special education teacher and/or the regular classroom teacher from the school responsible for serving the student in the school setting.
5. Components of a local school district's system for homebound and hospitalized service delivery shall include and address the following areas:
  - a. **Service providers.** Personnel assigned to provide homebound/hospitalized instruction to students with disabilities shall be licensed according to the standards specified in these Rules (VII.H.).
  - b. **Amount of instruction** will be determined by the IEP team.
  - c. **Initiation of services.** The delivery of educational services for the homebound or hospitalized student with disabilities must be approved by the student's health professional contingent upon the student's health and ability to receive instruction.
  - d. **Responsibility for services.** The home school district (district in which parents/guardians reside) retains responsibility for continuing the educational program of the student during his homebound or hospitalized stay, unless the student is also in the state's custody. In this case, the school district in which the student resides during state custody is responsible for providing the student's educational program. If the parent does not wish the district to provide the



services, and/or if the hospital or facility provides an educational program deemed appropriate by the parents, they may sign a form refusing school district services during the hospital/home stay. If the student is placed in a 24-hour residential setting, Rule III.P. applies.

- e. **Status of the IEP during homebound or hospitalized stay.** The IEP developed in the home district may continue to serve as the framework for special education instruction. The IEP team in the home district will have the responsibility to determine what elements of the IEP will continue to be addressed during the period of homebound or hospitalized stay.

### **III. X. GRADUATION.**

1. The obligation of the LEA to make FAPE available to all students with disabilities does not apply to students with disabilities who graduated from high school with a regular high school diploma. Students who participated in a graduation ceremony, but who were awarded a document other than a regular high school diploma (such as a GED or a Certificate of Completion or Attendance) are still entitled to FAPE.
2. Graduation with a regular high school diploma constitutes a change in placement requiring written prior notice in accordance with Rule IV.D. Parents of students who have reached the age of majority, or who are emancipated and have not been declared incompetent by a court, still retain their parental notice rights.
3. It is not necessary to evaluate a student as described in Rule II.D.E. before the termination of the student's special education eligibility due to graduation with a regular high school diploma or reaching the age of 22.
4. Graduation issues must be addressed by the IEP team on an individual basis. The IEP is the vehicle for making changes to graduation requirements to meet the unique educational needs for students with disabilities. As such, the IEP must document the nature and extent of modifications, substitutions, and/or exemptions made to accommodate a student with disabilities. (See III.X.6.c., High School Graduation Requirements.) The decision to terminate services, through graduation, for a student with disabilities under the age of twenty-two, is an IEP team decision.
5. Students who had been served in special education during one of their high school years, but who are not receiving services at the time of graduation, are eligible for changes made to their graduation requirements during the time they received services. When a student's special education services are terminated, the IEP team must document the modifications that have been made with appropriate school personnel to ensure that the student is on track for graduation.

6. Students with disabilities and their parents must be informed regarding graduation. Since graduation from high school with a regular diploma constitutes a change in placement requiring written prior notice (Rule IV.D.), parents and students must be notified of the student's impending graduation with enough lead-time for due process procedures to be implemented, should they disagree with the LEA's intent to graduate the student. This notification must include the following information:
  - a. Issuance of a regular high school diploma terminates the student's eligibility for public educational services. A regular high school diploma will terminate the LEA's obligation to provide FAPE until age 22.
  - b. The LEA may not be required to withhold issuance of an earned regular high school diploma if the student with disabilities has met the graduation requirements.
  - c. The IEP team "...on a case-by-case basis, may exempt the student or modify the mastery demonstration to accommodate the student's disability" (USOE Core Curriculum Standards, Appendix C). Students who have been served in special education during one of their high school years but who are not receiving service at the time of graduation are eligible for modifications made during the time they received service. When a student's special education services are terminated, special education teams must document the modifications that have been made with appropriate school personnel to ensure that the student is on track for graduation.
7. Graduation options, for students with disabilities whose age mates will graduate during a given academic year, include the following:
  - a. If all USOE and LEA graduation requirements are completed, the student will graduate and receive a regular high school diploma.
  - b. If graduation requirements as amended on the IEP are completed, the student will graduate and receive a regular high school diploma.
  - c. If graduation requirements as amended on the IEP are not completed and the student's IEP or transition plan documents the need for transition services offered by the LEA, the student may be allowed to participate in the graduation ceremonies; however, a diploma shall not be issued until the student has successfully completed his/her program.
  - d. If graduation requirements as amended on the IEP are not completed before the student reaches age 22, the student may be issued a certificate (e.g., Certificate of Completion or Progress) indicating that a record of competencies can be made available to them or to others who may legitimately inquire.
  - e. If graduation requirements as amended on the IEP are not completed due to factors that are **not** a direct manifestation of the student's disability (as determined by the IEP team), the student is not eligible to participate in graduation

ceremonies or receive a regular high school diploma until the amended requirements are met.

- f. If graduation requirements as amended on the IEP are not completed due to factors that are a direct manifestation of the student's disability (as determined by the IEP team), the student shall be allowed to participate in graduation ceremonies, but is not eligible to receive a regular high school diploma until the amended requirements are met.

### **III. Y. TERMINATION OF SERVICES.**

Termination of special education/related services to a student with a disability constitutes a change in placement and is therefore subject to the notice requirements of Rule IV.D. Termination of services must be made through a team meeting held for reviewing or changing a student's IEP. Required participants in the meeting to consider termination of services are the same as in any IEP meeting, and includes the student's parents. Discontinuation of special education services may be because:

1. The student no longer qualifies for special education services, as determined by the IEP team through the reevaluation process (Rules II.D., E., and F.).
2. The parent (or student of majority) refuses special education services. In this case, services are discontinued but the student is not declassified, and eligibility for services continues until the expiration of the three-year evaluation period. Such a refusal of service must be documented in writing and signed by the parent/guardian. If school personnel disagree with the decision of the parent to terminate special education, the LEA may request a due process hearing in order to allow the services to continue. (See Rule IV.I.)

### **III. Z. EARLY CHILDHOOD SERVICES.**

Services for students with disabilities ages 3 through 5, served in preschool programs, are to be provided consistent with these Rules, with the following additions/exceptions:

1. **Transition planning.** Transition planning for students referred from Part C providers must be conducted consistent with the state's current interagency transition agreement. This planning shall be implemented at least ninety (90) days before the student is eligible for the preschool program under Part B of the IDEA in accordance with these Rules. Each LEA will participate in transition planning meetings arranged by the lead agency for the Part C Program.
2. **Services at age three.**
  - a. For those students who turn age three during the school year, including those who are enrolled in early intervention programs, FAPE must be made available for eligible students on their 3<sup>rd</sup> birthday, and an IEP in effect for an eligible student by that date.



- b. If an eligible student's 3<sup>d</sup> birthday occurs during the summer, the student's IEP team shall determine the date when services under the IEP will begin.
3. **Head Start students.** Students counted under the preschool program who are being served by Head Start must meet all of the requirements in these Rules, including the eligibility criteria and the provision of FAPE.
4. **Appropriate activities.** See Rule III.I.1.b.
5. **Early identification and assessment** of disabilities in children means the implementation of a formal plan for identifying disabilities as early as possible in a child's life.

### III. AA. PROGRAM COORDINATION FOR STUDENTS WITH HEARING AND VISUAL IMPAIRMENTS.

The Utah Schools for the Deaf and the Blind (USDB) is a program option for hearing impaired, visually impaired, or deafblind students. Program options available to students with sensory impairments and their families must be considered on an individual basis through the cooperative efforts of each school district and the USDB. The local school district shall inform the parent or guardian of the child that a representative from the USDB can assist in developing the individualized education program and make recommendations for placement (UCA 53A-25-104(d), 203 (d)). If services are to be provided by the USDB rather than the LEA, documentation of the need for services from the USDB must be determined by the home school district's Individualized Education Program (IEP) team. *All requirements of Part B of the IDEA and these Rules apply* to eligible students, whether they are served by the USDB, an LEA, or a combination of the two.

1. The student's identification, demographic information, and existing evaluative information shall be forwarded by appropriate child find agencies or service and preschool providers to the appropriate LEA.
2. An appropriate evaluation team shall be identified, based on Rule II.E., to determine needed evaluation data, to assess all areas of suspected disability, and to determine the student's eligibility for services. USDB personnel are available for assisting LEAs in evaluating hearing impaired, visually impaired, and deafblind students, and in determining the significance of the impairment and how the impairment impacts other areas of development.
3. When students are jointly served by both LEA and USDB programs, appropriate representatives from both programs shall be notified within a reasonable amount of time and shall participate in all IEP meetings.
4. Following the initial IEP/placement meeting, appropriate representatives from both programs shall be notified within a reasonable amount of time and shall participate in, at a minimum, each subsequent 3-year reevaluation/IEP/placement meeting for all students in the state, ages 3 through 21, who are hearing impaired, visually impaired, or deafblind, and

served by the USDB, or by **both** the USDB and the LEAs, and at other times, as appropriate.

5. At the designation of the IEP team, and based on the student's IEP, either the USDB or the LEA shall serve as the student's service provider.
6. Parents of students placed at the USDB or in a USDB satellite program shall be provided written notification of the designation of responsibility for conducting due process hearings as specified in this section. Due process hearings requested for students who are hearing impaired, visually impaired, or deafblind shall be conducted by either the USDB or the LEA of the student's residence, according to the following criteria:
  - a. If the issue of dispute is placement at the USDB, the LEA is responsible for conducting the due process hearing.
  - b. If the issue of dispute is some aspect of the provision of special education and/or related services of a student already placed at the USDB or in a USDB satellite program, the USDB is responsible for all aspects of the due process hearing.

### **III. BB. DUAL ENROLLMENT FOR STUDENTS WITH DISABILITIES IN HOME SCHOOLS.**

1. No home-schooled student with a disability has an individual right to receive some or all of the special education and related services that the student would receive if enrolled in a public school.
2. The student shall meet the eligibility criteria for students with disabilities, in conformity with Rules II.F. and II.G., including proper documentation, using comparable procedures to those required for identifying and evaluating public school students.
3. The school district will develop a services plan for students with disabilities who qualify. The services plan shall describe the specific special education and related services that the LEA will provide to the student, and must, to the extent appropriate:
  - a. Meet the IEP content requirement (Rule III.I.) with respect to the services provided.
  - b. Be developed, reviewed, and revised consistent with the IEP provisions in Rule III.H.
4. Services will be provided at the school within whose boundaries the students' custodial parent(s) or legal guardian resides.

## **IV. PROCEDURAL SAFEGUARDS.**

Consistent with the requirements of Part B and these Rules, each LEA shall establish, maintain, and implement procedural safeguards for parents and students with disabilities.

### **IV. A. OPPORTUNITY TO EXAMINE RECORDS.**

The parents of a student with a disability must be afforded, in accordance with these Rules, an opportunity to inspect and review all education records with respect to the identification, evaluation, and educational placement of the student, and the provision of FAPE to the student, as defined in Rule I.E.18.)

### **IV. B. PARENT PARTICIPATION IN MEETINGS.**

1. The parents of a student with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, educational placement, and provision of FAPE to the student. LEAs must provide notice to parents of the meetings described above early enough to ensure that they will have an opportunity to participate. The notice itself must be consistent with Rules III.G. and IV.D.
2. A meeting does not include informal or unscheduled conversations involving LEA personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the student's IEP. A meeting also does not include preparatory activities that LEA personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.
3. Each LEA shall ensure that the parents of each student with a disability are members of any group that makes decisions on the educational placement of their student, consistent with the procedures of Rule III.F.

### **IV. C. INDEPENDENT EDUCATIONAL EVALUATION.**

Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the LEA responsible for the education of the student in question. Each LEA shall establish and implement policies and procedures related to independent educational evaluations that meet the requirements of Part B of the IDEA and these Rules. The following requirements must be addressed:

1. The parents of a student with a disability have the right to obtain an independent educational evaluation at public expense if they disagree with the LEA's evaluation of the student, subject to the provisions in this section.
2. The LEA shall provide to the parent, upon request for an independent education evaluation, information about where an independent educational evaluation may be

obtained and the LEA's criteria applicable for independent educational evaluations as set forth in this section.

3. If a parent requests an independent evaluation at the LEA's expense, the LEA must, without unnecessary delay, either initiate a hearing under Rule IV.H. to show that its evaluation is appropriate, or ensure that an independent educational evaluation is provided at public expense, unless the LEA demonstrates in a hearing that the evaluation obtained by the parent did not meet LEA criteria.
4. If the LEA initiates a hearing and the final decision is that the LEA's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at the LEA's expense. If an independent educational evaluation is to be at the LEA's expense, the LEA must ensure that the evaluation is provided at no cost to the parent.
5. If a parent requests an independent educational evaluation, the LEA may ask for the parent's reason why he or she objects to the public evaluation. However, the explanation by the parent may not be required, and the LEA may not unreasonably delay, either providing the independent educational evaluation at public expense, or initiating a due process hearing to defend the public evaluation.
6. If a parent obtains an independent educational evaluation of a student with a disability at private expense, the results of the evaluation must be considered by the LEA, if it meets LEA criteria, in any decision made with respect to providing a free and appropriate public education to the student; and may be presented as evidence at a due process hearing regarding that student.
7. When a request for an independent educational evaluation is made by a due process hearing officer, the evaluation must be at the LEA's expense.
8. Whenever an independent evaluation is made at the LEA's expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria the LEA utilizes when it initiates an evaluation, to the extent that those criteria are consistent with the parent's right to an independent educational evaluation.
9. An independent educational evaluation conducted at the LEA's expense becomes the property of the LEA, in its entirety.
10. Except for the criteria described in this section, the LEA may not impose conditions or timelines related to obtaining an independent education evaluation at public expense.

#### **IV. D. PRIOR NOTICE.**

1. Written notice must be provided to the parents of a student with a disability a reasonable time before the LEA proposes to initiate or change the identification, evaluation, educational placement of the student, or to provide a free and appropriate education, or if the LEA refuses to initiate or change the evaluation, identification or educational placement, or to provide a free and appropriate public education to the student. If the



notice described above relates to an action proposed by the LEA that also requires parental consent, the LEA may give notice at the same time it requests parental consent.

2. The notice required under this section must include:
  - a. A description of the action proposed or refused by the LEA, an explanation of why the LEA proposes or refuses to take the action, and a description of any other options the LEA considered and the reasons why those options were rejected.
  - b. A description of each evaluation procedure, test, record, or report the LEA used as a basis for the proposed or refused action.
  - c. A description of any other factors that are relevant to the LEA's proposal or refusal.
  - d. A statement that the parents of a student with a disability have protection under the procedural safeguards of Part B of the IDEA and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained.
  - e. Sources for parents to contact to obtain assistance in understanding the procedural safeguards provision of Part B of the IDEA.
3. The notice required under this section must be:
  - a. Written in language understandable to the general public.
  - b. Provided in the native language or other mode of communication used by the parent, unless it is clearly not feasible to do so.
4. If the native language or other mode of communication of the parent is not a written language, the LEA shall take steps to ensure that:
  - a. The notice is translated orally, or by other means, to the parent in his or her native language or other mode of communication.
  - b. The parent understands the content of the notice.
  - c. There is written evidence that these requirements have been met.

#### **IV. E. PROCEDURAL SAFEGUARDS NOTICE.**

1. A copy of the procedural safeguards available to the parents of a student with a disability must be given to the parents, at a minimum:
  - a. Upon initial referral for evaluation.
  - b. Upon each notification of an IEP meeting.

- c. Upon reevaluation of the student.
  - d. Upon receipt of a request for due process under these Rules.
2. The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under these Rules relating to:
- a. Independent educational evaluation.
  - b. Prior written notice.
  - c. Parental consent.
  - d. Access to educational records.
  - e. Opportunity to present complaints to initiate due process hearings.
  - f. The student's placement during pendency of due process proceedings.
  - g. Procedures for students who are subject to placement in an interim alternative educational setting.
  - h. Requirements for unilateral placement by parents of students in private schools at public expense.
  - i. Mediation.
  - j. Due process hearings, including requirements for disclosure of evaluation results and recommendations.
  - k. State-level appeals.
  - l. Civil actions.
  - m. Attorneys' fees.
  - n. The state complaint procedures, including a description of how to file a complaint and the timelines under those procedures.
3. The notice required under this section must be in language understandable by the parents, consistent with IV.D.3. and 4.

#### **IV. F. PARENTAL CONSENT.**

- 1. Granting of consent by the parent is voluntary and may be revoked at anytime. If the parent revokes consent, the revocation is not retroactive; that is, it does not negate an action that has occurred after the consent was given and before the consent was revoked.
- 2. Informed written parental consent must be obtained prior to:

- a. Conducting an initial evaluation or reevaluation.
  - b. Initial provision of special education and related services to a student with a disability.
3. Consent for initial evaluation may not be construed as consent for initial placement described in this section.
4. Parental consent is not required before:
  - a. Reviewing existing data as part of an evaluation or a reevaluation.
  - b. Administering a test or other evaluation that is administered to all students unless, before administration of that test or evaluation, consent is required of the parents of all students.
5. If the parents of a student with a disability refuse consent for initial evaluation or a reevaluation, the LEA may continue to pursue those evaluations by using the due process or mediation procedures under these Rules.
6. Informed parental consent need not be obtained for reevaluation if the LEA can demonstrate that it has taken reasonable measures to obtain that consent, and the student's parent has failed to respond. Documentation of an LEA's attempts to obtain informed parental consent for reevaluation must be consistent with the following procedures:
  - a. Detailed records of telephone calls made or attempted and the results of those calls.
  - b. Copies of correspondence sent to the parents and any responses received.
  - c. Detailed records of visits made to the parent's home or place of employment and the results of those visits.
7. An LEA may not use a parent's refusal to consent to one service or activity under this section to deny the parent or student any other service, benefit, or activity of the LEA, except as required by these Rules.

#### **IV. G. COMPLAINT PROCEDURES.**

1. The Utah State Office of Education (USOE) has adopted procedures for resolving any complaint, including a complaint filed by an organization or individual from another state. The complaint must be in writing to the school district superintendent of the LEA in which the alleged violation has occurred, with a copy sent to the State Director of Special Education. If the parents are unable to file in writing, they can contact the LEA or SEA for assistance. The complaint must include the following:

- a. A statement that the LEA has violated a requirement of Part B of the IDEA or these Rules.
  - b. The facts on which the statement is based.
2. The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received by the LEA, unless a longer period is reasonable because the violation is continuing or the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint is received by the LEA.
3. The LEA shall resolve the complaint within thirty (30) days unless exceptional circumstances exist (e.g., delay by a complainant to provide necessary information). An extension of time shall not exceed ten (10) days. Within this time limit, the LEA shall:
  - a. Carry out an independent on-site investigation, if the LEA determines that such an investigation is necessary.
  - b. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint.
  - c. Review all relevant information and make a determination as to whether the LEA is violating a requirement of Part B of the IDEA or of these Rules.
  - d. Issue a written decision to the complainant, with a copy sent to the State Director of Special Education, that addresses each allegation in the complaint and contains:
    - (1) Findings of facts and conclusions.
    - (2) The reasons for the LEA's final decisions.
  - e. Determine procedures for effective implementation of the LEA's final decision, if needed, including technical assistance activities, negotiations, and corrective actions to achieve compliance.
  - f. Inform the complainant, in writing, of the right to appeal the decision for review to the USOE, and the procedures for doing so. The appeal request must be received by the State Director of Special Education within ten (10) days of the receipt of the LEA's final decision.
  - g. If it takes longer than 30 days for the parent to receive the findings from the LEA investigation, the SEA timeline will be shortened by that number of days, so that full LEA and SEA complaint resolution will total 60 days.
4. The procedures for reviewing the LEA's final decision on appeal to the USOE shall be the same as those outlined above, in IV.G.3. a. through f. Within twenty (20) days of the

receipt of a written request for review, the USOE shall issue a final, written decision on the complaint including Rules IV.G.3.d. and e., above.

5. In resolving a complaint in which it has found a failure to provide appropriate services, the USOE pursuant to its general supervisory authority under Part B of the IDEA must address:
  - a. How to remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the student.
  - b. Appropriate future provision of services for all students with disabilities.
6. If a written complaint is received that is also the subject of a due process hearing, under the Due Process Hearing Procedures in these Rules, or contains multiple issues, of which one or more are part of that hearing, the LEA (or the USOE if the complaint is an appeal of an LEA decision) must set aside any part of the complaint that is being addressed in the hearing until its conclusion. Any issue in the complaint that is not a part of the due process hearing must be resolved using the time limit and complaint procedures described in this section.
7. If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties, then the hearing decision is binding. The USOE must inform both parties of this fact. A complaint alleging an LEA's failure to implement a due process decision, however, must be submitted directly to the State Director of Special Education and resolved by the USOE.
8. Parents and other interested individuals, including parent training and information centers, independent living centers, representatives of protection and advocacy agencies, professional organizations, and other appropriate entities, shall be informed about these procedures through:
  - a. Procedural safeguards notice provided by local school districts.
  - b. A statewide parent newsletter distributed on a regular basis.
  - c. USOE staff presentations conducted throughout the state.

#### **IV. H. DUE PROCESS HEARING AND MEDIATION PROCEDURES.**

Consistent with the requirements of Part B of the IDEA and these Rules, the procedures noted below shall be utilized for conducting due process hearings and mediation in the state.

##### **IV. I. REQUEST FOR HEARING.**

1. If the parents of a student with a disability are aggrieved by an LEA's decision or proposal to initiate or change, or refusal to initiate or change, the identification, evaluation, educational placement of the student, or the provision of a free appropriate public education to the student, they may request an impartial due process hearing of their complaint which is to be made in writing to the local school district superintendent. If the

parents are unable to make this request in writing, they can contact the LEA or the SEA for assistance. The LEA may also initiate a hearing on the same matters, as may a student with a disability or who is suspected of having a disability who is the age of majority, and has not been declared incompetent by a Utah Court.

2. The LEA must have procedures that require the parent of a student with a disability or the attorney representing the student to provide notice (which must remain confidential) to the LEA in a request for a hearing. The notice must include:
  - a. The name of the student.
  - b. The address of the residence of the student.
  - c. The name of the school the student is attending.
  - d. A description of the nature of the problem of the student relating to the proposed or refused initiation or change, including facts relating to the problem.
  - e. A proposed resolution of the problem to the extent known and available to the parents at the time.
3. The USOE has developed a model request form to assist parents in filing a request for a due process hearing that includes the information required above.
4. An LEA may not deny or delay a parent's right to a due process hearing for failure to provide the notice required in paragraph 2 of this section.
5. Upon receipt of a written request for a hearing, or the LEA initiates the hearing, the local school district superintendent shall:
  - a. Inform the parents in writing of any free or low-cost legal services, as well as other services relevant to mediation or a due process hearing, if the parent requests the information or initiates a hearing under this section.
  - b. Inform the parents of the availability of mediation.
  - c. Notify the State Director of Special Education of the request for the hearing.
6. The impartial due process hearing shall be conducted by the USOE, including costs associated with the payment of fees of the due process hearing officers and court reporter. The LEA is responsible for other costs of the hearing, including attorneys' fees.
7. The USOE shall ensure that within 45 days after receipt of the written hearing request, the hearing is immediately commenced and completed, including any mediation conducted pursuant to these Rules, and a final decision is rendered, unless a specific extension of time has been granted by the hearing officer.



8. The USOE shall monitor all due process hearings to ensure adherence to required procedures.

#### **IV. J. MEDIATION.**

Each LEA shall ensure that procedures are established and implemented to allow parties to resolve the disputes involving any matter described in Rule IV.I.1., through a mediation process that at a minimum must be available whenever a due process hearing or an expedited due process hearing is requested.

1. The procedures must meet the following requirements:
  - a. The procedures must ensure that the mediation process is voluntary on the part of the parties, is not used to deny or delay a parent's right to a due process hearing or to deny any other rights afforded under Part B of the IDEA, and is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.
  - b. The USOE shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services. A representative of the USOE shall assign a mediator on a random basis from that list whenever a due process hearing request is filed.
  - c. The USOE shall bear the cost of the mediation process, including meetings to encourage mediation.
  - d. Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient for the parties to the dispute.
  - e. An agreement reached by the parties to the dispute in the mediation process must be set forth in a final written mediation agreement signed by both parties. A copy of the signed written agreement shall be mailed or delivered by the mediator to each party within seven days following the mediation conference. A copy shall also be provided by the mediator within seven days to the State and Federal Compliance Officer for Special Education.
  - f. Any issues of the hearing complaint not resolved in the written mediation agreement will go forth to hearing, unless parties agree otherwise.
  - g. The absence of a signed mediation agreement within the prescribed time frame will constitute a presumption that agreement has not been reached, and due process hearing timelines continue.
  - h. Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings, and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the process. Nothing in

these regulations shall supersede any parental access rights under the Family Educational Rights and Privacy Act of 1974 or foreclose access to information otherwise available to the parties.

- i. Following resolution as denoted by a signed mediation agreement, the USOE will ascertain that the mediation agreement has been fully implemented by the responsible LEA. Should it be determined that the responsible LEA has not implemented the provisions of the agreement, the USOE will initiate enforcement procedures.

2. **Impartiality of mediator.** An individual who serves as a mediator:

- a. May not be an employee of:
  - (1) Any LEA or any state agency that receives funds under Part B of the IDEA.
  - (2) The USOE, if the USOE is providing direct services to the student who is the subject of the mediation process.
- b. Must not have a personal or professional conflict of interest.
- c. Is not an employee of an LEA or state agency solely because he or she is paid by the USOE to serve as a mediator.

3. **Meeting to encourage mediation.**

- a. An LEA may establish procedures to require parents who elect not to use the mediation process to meet, at a time and location convenient to the parents with a disinterested party:
  - (1) Who is under contract with a parent training and information center or community parent resource center in the state established under Part B of the IDEA, or an appropriate alternative dispute resolution entity.
  - (2) Who would explain the benefits of the mediation process, and encourage the parents to use the process.
- b. An LEA may not deny or delay a parent's right to a due process hearing under these Rules if the parent fails to participate in the meeting described in this section.

**IV. K ASSIGNMENT OF HEARING OFFICER.**

1. If either party refuses to participate in a mediation conference or other proposed mediation steps, or if mediation efforts fail to settle the differences between the parties, the Utah State Office of Education Director of Special Education shall assign an impartial hearing officer on a random (rotation) basis. The hearing officer schedule and assignment

history is public information. The USOE and LEAs shall maintain a register of persons who may serve as hearing officers, including their qualifications, who have been trained and approved by the State Office of Education. The impartial hearing officer shall carry out all appropriate activities in conformance with the State Office of Education procedures.

2. An impartial hearing officer shall not be assigned from the register to a particular hearing who, with respect to that hearing, has any personal or professional bias or interest which might conflict with his or her objectivity toward either of the parties to the hearing or any of the issues to be decided in the hearing. An employee of the state or local education agency involved in the education or care of the student shall also be excluded from serving as a hearing officer.
3. An individual who otherwise qualifies to conduct a hearing is not an employee of the USOE solely because he or she is paid by the USOE to serve as a hearing officer.
4. A hearing officer may at any point withdraw from consideration or from service in any hearing in which he or she believes a personal or professional bias or interest of any of the issues to be decided in the hearing exists which might conflict with his or her objectivity.

#### **IV. L. PRE-HEARING PROCEDURES.**

1. Within a reasonable amount of time, the hearing officer shall provide the parent or guardian, the LEA, and the SEA written notice of the date, time, and place of the hearing.
2. The hearing officer shall ensure that the hearing is conducted at a time and place reasonably convenient to the parties involved.
3. At the discretion of the hearing officer, a pre-hearing conference shall be held in order to:
  - a. Clarify the issue(s) of the hearing.
  - b. Review the hearing rights of both parties.
  - c. Review the procedures for conducting the hearing.
  - d. Afford both parties the opportunity for disclosure. In no event will such a pre-hearing conference be held later than five days prior to the hearing.
4. Each party shall disclose to the other the full name, title, occupation, and place of employment of each witness, a capsule summary of the witnesses' testimony and any other evidence to be presented. These disclosures must be made at least five days prior to the hearing.
5. During a pre-hearing conference conducted pursuant to this section, or in the alternative through the delivery of a written notice, the hearing officer shall ensure that the parents are provided a full explanation of their hearing rights.

#### **IV. M. HEARING RIGHTS.**

Any party to a hearing has the right to:

1. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of students with disabilities.
2. Present evidence and confront, cross-examine, and compel the attendance of witnesses.
3. Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing.
4. Obtain a written, or at the option of the parents, electronic verbatim record of the hearing.
5. Obtain written, or at the option of the parents, electronic findings of fact and decisions.
6. At least 5 business days before a hearing, each party shall disclose to all other parties all evaluations completed by that date and recommendations, based on the offering party's evaluations, that the party intends to use at the hearing.
7. A hearing officer may bar any party that fails to comply with the above provision from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

#### **IV. N. PARENT RIGHTS IN HEARING.**

In addition to the rights noted above, parents are assured of their right to have the student who is the subject of the hearing present, and to determine whether the hearing shall be open or closed to the public. The record of the hearing and the findings of fact and decisions must be provided at no cost to parents.

#### **IV. O. DECISION OF HEARING OFFICER.**

The hearing officer's decision shall be issued in accordance with the following requirements:

1. The decision will be in writing, or at the option of the parent, electronic, and shall be sent by certified mail or hand-delivered within 45 days after the request for the hearing to the parents, to the local education agency, to their respective representatives, and to the USOE Compliance Officer. A hearing officer may grant specific extensions of time beyond the 45 days, at the request of either party.
2. The decision of the hearing officer will include findings of fact and decision, and reasons for these findings and decision.
3. The decision of the hearing officer shall be based solely on evidence and testimony presented at the hearing.

4. A verbatim record of the proceedings of the hearing will be made, and shall include any materials or statements specifically requested by any of the parties to appear in the record.
5. The decision of the hearing officer is final upon the parents and upon the LEA, its officers, employees and agents, unless a party to the hearing appeals the decision to civil action.
6. Following rendering of the hearing officer's decision, the USOE will ascertain that the decision has been fully implemented by the responsible LEA through its monitoring process. Should it be determined that the responsible LEA has not implemented these orders, the USOE will initiate enforcement procedures.
7. The USOE Compliance Officer or designee shall transmit the findings and decision to the Utah State Office of Education Special Education Advisory Panel (USEAP) and make them available to the public, after deleting any personally identifiable information.

#### **IV. P. CIVIL ACTION.**

Any party aggrieved by the due process hearing decision has the right to bring a civil action with respect to the complaint under Section 615 of the Individuals with Disabilities Education Act. "A civil action may be filed in either state or federal court; if appealed to state court, the appeal must be filed within 30 days of the date of the due process hearing decision. A federal court may apply a similar time limit."

1. In any action brought under this section, the court:
  - a. Shall receive the records of the administrative proceeding.
  - b. Shall hear additional evidence at the request of a party.
  - c. Shall grant the relief that the court determines to be appropriate, basing its decision on the preponderance of the evidence.
2. The district courts of the United States have jurisdiction of actions brought under Section 615 of the IDEA, without regard to the amount in controversy.
3. Nothing in this part restricts or limits the rights, procedures, and remedies available under the U.S. Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, or other federal laws protecting the rights of students with disabilities, except that, before the filing of a civil action under these laws seeking relief that is also available under Section 615 of the IDEA, the procedures for a due process hearing must be exhausted to the same extent as would be required had the action been brought under Section 615 of the IDEA (Procedural Safeguards).

#### **IV. Q. EXPEDITED DUE PROCESS HEARING PROCEDURES.**

Expedited due process hearings must meet the same requirements of a due process hearing, except that the hearing officer may make the determination that:

1. Each party has the right to prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least 2 business days before the expedited hearing.
2. At least 2 business days before an expedited hearing, each party shall disclose to the other parties all evaluations completed by that date, and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

An expedited due process hearing must be conducted by an impartial due process hearing officer who satisfies the requirements of Rule IV.K. and whose schedule will permit conducting the hearing and issuing a written decision within the expedited hearing time frame. If a hearing officer's name is selected from the list who meets all of the requirements with the exception of meeting the specified time frame, the next name on the list will be selected. This process will be repeated as necessary until a hearing officer who can meet the accelerated time frame is named. A written decision shall be mailed or delivered to the parties within 45 days of the LEA's receipt of the request for the hearing, without exceptions or extensions. The timeline established under this section is the same for expedited hearings requested by parents or LEAs.

The hearing officer's decision in an expedited due process hearing is final, consistent with the procedures for any due process hearing decision, and may be appealed to civil action.

#### **IV. R. STUDENT'S STATUS DURING PROCEEDINGS.**

1. Except when challenging the Interim Alternative Educational Setting (IAES) or manifestation determination under Rule V., during the pendency of any administrative hearing or judicial proceeding pursuant to these Rules, the student involved must remain in the current educational placement, unless the LEA and the parents agree otherwise.
2. If the hearing involves an application for initial admission to public school, the student, with the consent of the parents, must be placed in the public school program of the school district until the completion of all the proceedings.
3. If the decision of a hearing officer in a due process hearing agrees with the student's parents that a change of placement is appropriate, that placement must be treated as an agreement between the LEA and the parents for purposes of the "stay put" placement described in Rule IV.R.1., of this section, including any judicial proceeding(s).

#### **IV. S. EXPENDITURES ASSOCIATED WITH THE HEARING.**

The USOE shall be responsible for paying fees and necessary expenses incurred by the hearing officer, and the court reporter or stenographic service, in accordance with USOE policies and procedures. The parents and LEA involved shall each be responsible for any legal or other fees that they incur. The LEA may not use IDEA-B funds to pay the costs of attorney's fees or costs

related to a hearing, such as depositions, expert witnesses and settlements. An LEA's state and/or local funds must be used for those expenses.

#### **IV. T. REASONABLE ATTORNEYS' FEES.**

1. In any action or proceeding brought under section 615 of the IDEA the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents of a student with a disability who is the prevailing party.
2. A court may award reasonable attorneys' fees consistent with the following:
  - a. Fees awarded under 615(i)(3) of the Act must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection.
  - b. Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under Section 615 of the IDEA for services performed subsequent to the time of a written settlement offer to a parent if:
    - (1) The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure, or in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins.
    - (2) The offer is not accepted within 10 days.
    - (3) The court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.
  - c. Attorneys' fees may not be awarded relating to any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial action.
  - d. An award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.
  - e. Except as noted in paragraph f below, the court reduces the amount of attorneys' fees awarded, if the court finds that:
    - (1) The parent, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy.
    - (2) The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for

similar services by attorneys of reasonably comparable skill, reputation and experience.

- (3) The time spent and legal services furnished were excessive considering the nature of the action or proceeding.
- (4) The attorney representing the parent did not provide the school district the appropriate information in the due process complaint as required in Rule IV.I.2.

f. The above provisions related to reduction in the amount of attorneys' fees do not apply in any action or proceeding if the court finds that the USOE or LEA unreasonably protracted the final resolution of the action or proceeding or there was a violation of Section 615 of the IDEA.

#### **IV. U. SURROGATE PARENTS.**

- 1. Each LEA shall ensure that the rights of a student with a disability are protected if no parent can be identified (as defined in I.E.33), if the parent's whereabouts after reasonable efforts cannot be discovered, or where the student is a ward of the state. Under such circumstances, the student shall be assigned a surrogate parent. The LEA shall maintain a list of persons who have completed a surrogate-training program, from which a surrogate parent is assigned. The LEA must establish a method for determining whether a student needs a surrogate parent and assigning a surrogate parent.
- 2. The surrogate parent may represent the student in all matters relating to the identification, evaluation and education placement of the student, including the provision of a free appropriate public education.
- 3. The LEA shall ensure that a person selected as a surrogate:
  - a. Is not an employee of the USOE, the LEA, or any other agency involved in the education or care of the student.
  - b. Has no interest that conflicts with the interest of the student he or she represents.
  - c. Has knowledge and skills that ensure adequate representation of the student.
- 4. The LEA may select as a surrogate parent a person who is an employee of a nonpublic agency that only provides noneducational care for the student and who meets the standards in 3.b. and c. above.
- 5. A person who otherwise qualifies to be a surrogate parent under this section is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

#### **IV. V. TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY.**



1. Consistent with state law which applies to all students, when a student with a disability reaches the age of 18 (except for a student declared incompetent by the courts), the LEA shall provide any Notice required by these Rules to both the student and the parents, and all other rights accorded to parents under Part B of the IDEA and these Rules transfer to the student.
2. All rights accorded to parents under Part B of the IDEA and these Rules transfer to students over age 18 who are incarcerated in an adult or juvenile, state, or local correctional institution.
3. If a student with a disability is determined by the court not to have the ability to provide informed consent with respect to his or her educational program, the LEA shall establish procedures for appointing the parent, or if the parent is not available, another appropriate individual, to represent the educational interests of the student throughout the student's eligibility under Part B of the IDEA. The LEA shall use its surrogate parent procedures in order to implement this requirement. The parent still retains the right to any required notice, along with the student.
4. A statement is required on the student's IEP, beginning at least one year before a <sup>th</sup> birthday, that the student and parents have been informed of their rights under Part B of the IDEA that will transfer to the student on reaching the age of 18, consistent with these Rules. The parent still retains the right to any required notice, along with the student. All other rights accorded to parents under Part B transfer to the student.

#### IV. W. CONFIDENTIALITY OF INFORMATION.

1. The following definitions are provided as used in this section:
  - a. **Personally identifiable** means that information includes:
    - (1) The name of the student, the student's parent, or other family member.
    - (2) The address of the student.
    - (3) A personal identifier, such as the student's social security number or student number.
    - (4) A list of personal characteristics or other information that would make it possible to identify the student with reasonable certainty.
  - b. **Destruction** means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

- c. **Education records** means the type of records covered under the definition of “education records” in 34 CFR Part 99 (the regulations implementing the Family Education Rights and Privacy Act of 1974).
  - d. **Participating agency** means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the IDEA.
- 2. The USOE/LEAs will establish and implement procedures which meet the requirements of Part B of the IDEA and these Rules, including notice to parents with:
  - a. A description of the extent that the notice is given in the native languages of the various population groups in the state.
  - b. A description of the students on whom personally identifiable information is maintained, the types of information sought, the methods the USOE has established for use in gathering the information (including sources from whom information is gathered), and the uses to be made of the information.
  - c. A summary of the policies and procedures that the LEAs must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information.
  - d. A description of all of the rights of parents and students regarding this information, including the rights under the Family Educational Rights and Privacy Act of 1974 (FERPA) and implementing regulations under 34 CFR Part 99.
- 3. Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers, or other media, or both, with circulation adequate to notify parents throughout the state/school district of the activity.
- 4. **Right of access.**
  - a. Each LEA shall permit parents to inspect and review any education records relating to their children which are collected, maintained, or used by the LEA under these Rules. The LEA shall comply with a request without unnecessary delay and before any meeting regarding an IEP or any due process hearing, including an expedited due process hearing, and in no case more than 45 days after the request has been made.
  - b. The right to inspect and review education records under this section includes:
    - (1) The right to a response from the LEA to reasonable requests for explanations and interpretations of the records.
    - (2) The right to request that the LEA provide copies of the records containing the information if failure to provide those copies would

effectively prevent the parent from exercising the right to inspect and review the records.

- (3) The right to have a representative of the parent inspect and review the records.
- c. An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable state law governing such matters as guardianship, separation, and divorce.
5. **Record of access.** Each LEA shall keep a record of parties obtaining access to education records collected, maintained, or used under Part B of the IDEA (except for access by parents and authorized employees of the LEA), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.
6. **Records on more than one student.** If any education record includes information on more than one student, the parents of each child shall have the right to inspect and review only the information relating to their child or to be informed of that specific information.
7. **List of types and locations of information.** On request, each LEA shall provide parents a list of the types and locations of education records collected, maintained, or used by the agency.
8. **Fees.**
  - a. An LEA may charge a reasonable fee for copies of records that are made for parents under Part B of the IDEA, if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.
  - b. A participating agency may not charge a fee to search for or to retrieve information under this section.
9. **Amendment of records at parent's request.**
  - a. A parent who believes that information in the education records collected, maintained, or used under Part B of the IDEA is inaccurate or misleading or violates the privacy or other rights of the student, may request the LEA which maintains the information to amend the information.
  - b. The LEA shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.
  - c. If the LEA decides to refuse to amend the information in accordance with the request it shall inform the parent of the refusal, and advise the parent of the right to a hearing on the matter. (See Rule IV.W.9.)

10. **Opportunity for a hearing.**

- a. The LEA shall, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student.
- b. If, as a result of the hearing, the LEA decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall amend the information accordingly and so inform the parents in writing.
- c. If, as a result of the hearing, the LEA decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall inform the parents of the right to place in the records it maintains on the student a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the LEA.
- d. Any explanation placed in the records of the student under this section must be maintained by the LEA as part of the records of the student as long as the record or contested portion is maintained by the LEA, and if the records of the student or the contested portion is disclosed by the LEA to any party, the explanation must also be disclosed to the party.

11. **Hearing procedures.** A hearing, which challenges the education records, must be held in accordance with 34 CFR 99 as specified in the procedures described below. At a minimum, the LEA's hearing procedures must adhere to the following requirements:

- a. The hearing shall be held within a reasonable period of time after the LEA receives the request, and the parent of the student or eligible student shall be given notice of the date, place, and time reasonably in advance of the hearing.
- b. The hearing may be conducted by any party, including an official of the LEA, that does not have a direct interest in the outcome of the hearing.
- c. The parent of the student or eligible student shall be afforded a full and fair opportunity to present evidence relevant to the issues raised, and may be assisted or be represented by individuals of his or her choice at his or her own expense, including an attorney.
- d. The LEA shall make its decision in writing within a reasonable period of time after the conclusion of the hearing.
- e. The decision of the LEA shall be based solely upon the evidence presented at the hearing, and shall include a summary of the evidence and the reasons for the decision.

12. **Parental consent.**

- a. Except as to disclosures addressed in Rule V.Q. of “Discipline Procedures” for which parental consent is not required by Part 99, parental consent must be obtained before personally identifiable information is:
  - (1) Disclosed to anyone other than officials of participating agencies collecting or using the information under this part.
  - (2) Used for any purpose other than meeting a requirement under this part.

- b. An LEA may not release information from education records to participating agencies without parental consent unless authorized to do so by 34 CFR 99.31 and 99.34 (FERPA).
  - (1) Regulation 34 CFR 99.31 states that:
    - (a) An LEA may disclose personally identifiable information from the education records of a student without the written consent of the parent of the student or the eligible student if the disclosure is:
      - 1) To other school officials, including teachers, within the LEA who have been determined by the LEA to have legitimate educational interests.
      - 2) To officials of another school or school system in which the student seeks or intends to enroll, subject to the requirements set forth in 34 CFR 99.34, below.
    - (2) Regulation 34 CFR 99.34 states that:
      - (a) An LEA transferring the education records of a student pursuant to 34 CFR 99.31 above shall make a reasonable attempt to notify the parent of the student or the eligible student of the transfer of the records at the last known address of the parent or eligible student, except:
        - 1) When the transfer of the records is initiated by the parent or eligible student at the sending LEA.
        - 2) When the LEA includes, in its annual notice of procedural safeguards, that it is the policy of the LEA to forward education records on request to a school in which a student seeks or intends to enroll, then the LEA does not have to provide any further notice of the transfer of records.
  - c. An educational agency receiving personally identified information from another educational agency or institution may make further disclosures of the information on behalf of the educational agency without the prior written consent of the parent or eligible student if the conditions of 34 CFR 99.31 and 99.34 noted above are met, and if the educational agency informs the party to whom disclosure is made of these requirements.
  - d. If the parents refuse consent for the release of personally identifiable information to a third party, then that party may proceed with statutory procedures in an effort to obtain the desired information.

13. **Safeguards.**

- a. Each LEA shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.
- b. One official at each LEA shall assume responsibility for ensuring the confidentiality of any personally identifiable information.
- c. All persons collecting or using personally identifiable information must receive training or instruction regarding the state's policies and procedures in this section and 34 CFR Part 99.
- d. Each LEA shall maintain, for public inspection, a current listing of the names and positions of those employees within the LEA, and other agencies such as the USDB, who may have access to personally identifiable information for students with disabilities. The listing shall include: the name of district/LEA, name of school, school year, persons having access, and name of records manager.
- e. The above listing, where appropriate, must provide for the access of regular education teachers for their students with disabilities, and also must include the names and positions of consultants employed by the district and/or USDB who may require access, for legitimate educational reasons, to student records. This also includes student teachers or practicum students from universities, under the direction and supervision of school officials.

14. **Destruction of information.**

- a. The LEA shall inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the student.
- b. The information no longer needed must be destroyed at the request of the parents. However, a permanent record of the student's name, address, phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed, may be maintained without time limitation.

15. **Student's rights.** All of the foregoing parental rights regarding educational records are transferred to the student when reaching the age of 18 (Rule IV.W.), unless the student has been declared incompetent by court order. The LEA must provide the required notice of this action to the student and the parents consistent with the provisions under Rule IV.W.

16. **Enforcement.**

- a. Confidentiality requirements are reviewed and approved as part of the LEA eligibility process under IDEA-B.

- b. Confidentiality is monitored through the Part B monitoring process at least once every five years and includes sanctions to ensure these requirements are met.

17. **Disciplinary information.**

- a. The USOE requires that an LEA include in the records of a student with a disability a statement of any current or previous disciplinary action that has been taken against the student, and transmit the statement to the same extent that the disciplinary information is included in, and transmitted with, the student records of nondisabled students.
- b. The statement must include a description of any behavior engaged in by the student that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the student and other individuals involved with the student.
- c. If the student transfers from one school to another, the transmission of any of the student's records must include both the student's current individualized education program and any statement of current or previous disciplinary action that has been taken against the student.

18. **U.S. Department use of personally identifiable information.**

If the U.S. Department of Education or its authorized representatives collect any personally identifiable information regarding students with disabilities that is not subject to FERPA, the Secretary applies the applicable federal statute, and the regulations implementing those provisions in 34 CFR Part 5b.



## **V. DISCIPLINE PROCEDURES.**

### **V. A. DISCIPLINE PROCEDURES FOR STUDENTS WITH DISABILITIES.**

Consistent with the requirements of Part B of the IDEA and these Rules, each LEA shall establish, maintain, and implement policies and procedures for disciplining students with disabilities.

### **V. B. DEFINITIONS.**

The following definitions apply to this section only.

1. **Controlled substance** means a drug or other substance identified under schedules I, II, III, IV, or V in Section 202(c) of the Controlled Substances Act (21 USC 812(c)).
2. **Weapon** has the meaning of the term “dangerous weapon” given under paragraph (2) of the first subsection (g) of Section 930 of Title 18, USC. **“Dangerous weapon”** means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 ½ inches in length.
3. **“Illegal drug”** means a controlled substance but does not include a substance that is legally possessed or used under the supervision of a licensed health-care professional, or that is legally possessed or used under any other authority under that Act or under any other provision of federal law.
4. **“Substantial evidence”** means beyond a preponderance of the evidence.

### **V. C. CHANGE OF PLACEMENT FOR DISCIPLINARY REMOVALS.**

For purposes of removals of a student with a disability from the student’s current educational placement as described in this section, a change of placement occurs if:

1. The removal is for more than 10 consecutive school days.
2. The student is subjected to a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year, and because of factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another.

### **V. D. REMOVALS—TEN (10) SCHOOL DAYS OR LESS.**

To the extent removal would be applied to students without disabilities, school personnel may order the removal of a student with a disability from the student's current placement for not more than 10 consecutive school days for any violation of school rules, and additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct, as long as those removals do not constitute a change of placement under Rule V.C. 2.

#### **V. E. REQUIRED SERVICES—NO CHANGE OF PLACEMENT.**

1. An LEA need not provide services during periods of removal, under Rule V.D., to a student with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if services are not provided to a student without disabilities who has been similarly removed.
2. In the case of a student with a disability who has been removed from his or her current placement for more than 10 school days in the same school year, the LEA, for the remainder of the removals, shall provide services to the extent necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP.
3. School personnel, in consultation with the student's special education teacher, determine the extent to which services are necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP.

#### **V. F. REMOVALS FOR WEAPONS OR DRUGS.**

School personnel may order a change in placement of a student with a disability to an appropriate interim alternative educational setting for the same amount of time that a student without a disability would be subject to discipline, but for not more than 45 calendar days, if:

1. The student carries a weapon to school or to a school function under the jurisdiction of a state or local education agency.
2. The student knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a state or local educational agency.
3. The interim alternative educational setting must be determined by the IEP team.

#### **V. G. FUNCTIONAL BEHAVIORAL ASSESSMENT AND INTERVENTION PLAN.**

Within 10 business days after first removing a student for more than ten (10) school days in a school year, or for weapons violations, drugs violation, or behavior that is substantially likely to result in injury to the student or to others, the following actions shall be taken by the LEA:

1. If the LEA did not conduct a functional behavioral assessment and implement a behavioral intervention plan for the student before the behavior that resulted in the removal occurred, the LEA shall convene an IEP meeting to develop an assessment plan.
2. If the student already has a behavioral intervention plan, the IEP team shall meet to review the plan and its implementation, and modify it, as necessary, to address the behavior.
3. As soon as practicable after developing the assessment plan described in subsection V.G.1. of this section, and completing the assessments required by the plan, the LEA shall convene an IEP meeting to develop appropriate behavioral interventions to address that behavior, and shall implement those interventions.
4. If, subsequently, a student with a disability who has a behavioral intervention plan and who has been removed from the student's current educational placement for more than 10 school days in a school year, is subjected to a removal that does not constitute a change of placement under Rule V.C., the IEP team members shall review the behavioral intervention plan and its implementation to determine if modifications are necessary.

If one or more of the team members believe that modifications are needed, the team shall meet to modify the plan and its implementation to the extent the team determines necessary.

#### **V. H. AUTHORITY OF HEARING OFFICER.**

A hearing officer under IDEA-B may order a change in the placement of a student with a disability to an appropriate interim alternative educational setting for not more than forty-five (45) calendar days if the hearing officer, in an expedited due process hearing:

1. Determines that the LEA has demonstrated by substantial evidence that maintaining the current placement of the student is substantially likely to result in injury to the student or to others.
2. Considers the appropriateness of the student's current placement.
3. Considers whether the LEA has made reasonable efforts to minimize the risk of harm in the student's current placement, including the use of supplementary aids and services.
4. Determines that the interim alternative educational setting that is proposed by school personnel who have consulted with the student's special education teacher meets the requirements of Rule V.I.

#### **V. I. DETERMINATION OF INTERIM ALTERNATIVE EDUCATIONAL SETTING.**

Any interim alternative educational setting in which a student is placed under Rules V.F. and V.H. must:

1. Be selected so as to enable the student to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the student's current IEP, that will enable the student to meet the goals set out in that IEP.
2. Include services and modification designed to address the behavior described in Rules V.F. and V.G. that are designed to prevent the behavior from recurring.

The IEP team must determine the interim alternative educational setting referred to under Rule V.F.

#### **V. J. MANIFESTATION DETERMINATION REVIEW REQUIREMENT.**

If an LEA removes, or contemplates removing a student for weapons violations, drug violations, behavior that is substantially likely to result in injury to the student or to others, or other behavior that violates any rule or code of conduct that applies to all students which results in a change of placement under Rule V.C., the following actions shall be taken by the LEA:

1. Not later than the date on which the decision to remove the student is made, the parents must be notified of that decision and provided the procedural safeguards notice described under these Rules.
2. Immediately, if possible, but in no case later than 10 school days after the date on which the decision to remove the student is made, a review must be conducted of the relationship between the student's disability and the behavior subject to the disciplinary action. The review must be conducted by the IEP team and other qualified personnel in a meeting.

#### **V. K. PROCEDURES FOR CONDUCTING A MANIFESTATION DETERMINATION REVIEW.**

The IEP team and other qualified personnel in a meeting must conduct a manifestation determination review. In carrying out the review, the IEP team and other qualified personnel may determine that the behavior of the student was not a manifestation of the student's disability only if the team and other qualified personnel:

1. First consider, in terms of the behavior subject to disciplinary action, all relevant information, including:
  - a. Evaluation and diagnostic results, including the results or other relevant information supplied by the parents of the student.
  - b. Observations of the student.
  - c. The student's IEP and placement.
2. Then determines that:

- a. In relationship to the behavior subject to disciplinary action, the student's IEP and placement were appropriate, and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the student's IEP and placement.
  - b. The student's disability did not impair the ability of the student to understand the impact and consequences of the behavior subject to disciplinary action.
  - c. The student's disability did not impair the ability of the student to control the behavior subject to disciplinary action.
3. If the IEP team and other qualified personnel determines that any of the above standards in this section were not met, the behavior must be considered a manifestation of the student's disability.
4. The manifestation determination review described in this section may be conducted at the same IEP meeting that is convened to address a functional behavioral assessment and behavioral intervention plan.
5. If the review identifies deficiencies in the student's IEP or placement, or in their implementation, the LEA must take immediate steps to remedy those deficiencies.

**V.L. DETERMINATION THAT BEHAVIOR WAS NOT A MANIFESTATION OF DISABILITY.**

1. If the results of the manifestation determination review indicate that the behavior of the student with a disability was not a manifestation of the student's disability, the relevant disciplinary procedures applicable to students without disabilities may be applied to the student in the same manner in which they would be applied to students without disabilities, except that FAPE shall continue to be made available to those students consistent with Rule V.E.2.
2. The student's IEP team determines the extent to which services are necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP if the student is removed because of behavior that has been determined not to be a manifestation of the student's disability.
3. If the LEA initiates disciplinary procedures applicable to all students, the LEA shall ensure that the special education and disciplinary records of the student with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.
4. If a parent requests a hearing to challenge the determination that the behavior of the student was not a manifestation of the student's disability, then the student shall remain in the student's current educational placement as described in Rule IV.R., or in an interim alternative educational setting consistent with Rule V.N., whichever applies.

#### **V. M. PARENT APPEAL.**

1. If the student's parent disagrees with a determination that the student's behavior was not a manifestation of the student's disability, or with any decision regarding placement, the parent may request a hearing.
2. The USOE shall arrange for an expedited hearing in any case described in this section if requested by the parent.
3. In reviewing a decision with respect to the manifestation determination, the hearing officer shall determine whether the LEA has demonstrated that the student's behavior was not a manifestation of the student's disability, consistent with the requirements of Rule V.K.
4. In reviewing a decision to place the student in an interim alternative educational setting, the hearing officer shall apply the standards under "Authority of Hearing Officer", Rule V.H.

#### **V. N. PLACEMENT DURING APPEALS.**

1. If a parent requests a hearing regarding a disciplinary action described in Rule V.F. or Rule V.J., to challenge the interim alternative educational setting or the manifestation determination, the student must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the forty-five- (45) day time period provided for, whichever occurs first, unless the parent and the local educational agency agree otherwise.
2. If a student is placed in an interim alternative educational setting pursuant to Rule V.F. or Rule V.H., and school personnel propose to change the student's placement after expiration of the interim alternative placement, during the pendency of any proceeding to challenge the proposed change in placement the student must remain in the current placement (the student's placement prior to the interim alternative educational setting), except as provided for in this section.
3. If school personnel maintain that it is dangerous for the student to be in the current placement (placement prior to removal to the interim alternative education setting) during the pendency of the due process proceedings, the LEA may request an expedited due process hearing.
4. In determining whether the student may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the standards under "Authority of Hearing Officer", Rule V. H.
5. A placement ordered pursuant to this section may not be longer than forty-five (45) days. The procedure in V.N.3., above, may be repeated as necessary.

#### **V. O. PROTECTIONS FOR STUDENTS NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES.**

1. A student who has not been determined to be eligible for special education and related services under these Rules, and who has engaged in behavior that violated any rule or code of conduct of the LEA, including any behaviors described in this section, may assert any of the protections provided for in this section, if the LEA had knowledge that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred.
2. An LEA must be deemed to have knowledge that a student is a student with a disability if:
  - a. The parent of the student has expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) to personnel of the appropriate LEA that the student is in need of special education and related services.
  - b. The behavior or performance of the student demonstrates the need for these services in accordance with student evaluation/classification procedures, Rules II.D. and II.F.
  - c. The parent of the student has requested an evaluation of the student pursuant to Rule II.D.
  - d. The teacher of the student, or other personnel of the LEA, has expressed concern about the behavior or performance of the student to the director of special education of the LEA or to other personnel of the LEA in accordance with their established Child Find or special education referral system.
3. An LEA would not be deemed to have knowledge under this section, if, as a result of receiving the information, the LEA either:
  - a. Conducted an evaluation consistent with these Rules and determined that the student was not a student with a disability; or
  - b. Determined that an evaluation was not necessary, and provided notice to the student's parents of its determination consistent with prior notice requirement Rule IV.D.
4. If an LEA does not have knowledge that a student is a student with a disability prior to taking disciplinary measures against the student, the student may be subjected to the same disciplinary measures as measures applied to students without disabilities who engaged in comparable behaviors consistent with this section.
5. If a request is made for an evaluation of a student during the time period in which the student is subjected to disciplinary measures under this section, the evaluation must be conducted in an expedited manner.
6. Until the evaluation is completed, the student remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

7. If the student is determined to be a student with a disability, taking into consideration information from the evaluation conducted by the LEA and information provided by the parents, the LEA shall provide special education and related services in accordance with the provisions of these Rules, including the discipline procedures and FAPE requirements.

**V. P. EXPEDITED DUE PROCESS HEARING PROCEDURES.**

(See Rule IV.Q.)

**V. Q. REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES.**

1. Nothing in Part B of the IDEA prohibits an LEA from reporting a crime committed by a student with a disability to appropriate authorities, or to prevent state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a student with a disability.
2. An LEA reporting a crime committed by a student with a disability shall ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom it reports the crime.
3. An LEA reporting a crime under this section may transmit copies of the student's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.



## **VI. RESPONSIBILITIES OF THE STATE OFFICE OF EDUCATION.**

### **VI.A. GENERAL SUPERVISORY AUTHORITY.**

Authority and responsibility to make policy and set standards in the area of education of students with disabilities rests with the State Board of Education by virtue of its constitutional mandate to provide general control and supervision of the public school system (Article X, Section 8) and by specific legislative enactment found in the Utah Code, Annotated: 53A-15-301 through 305. The statutes cited also indicate an intended partnership arrangement between the State Board of Education and local school districts. The statute also provides for general supervision of programs for students with disabilities served by all LEAs and institutions concerned with the training of students with disabilities.

**53A-15-301. (1)** (a) All students with disabilities, who are between the ages of 3 and 22 and have not graduated from high school with a regular diploma, are entitled to a free appropriate public education. (b) the State Board of Education shall adopt Rules consistent with applicable state and federal law to implement this chapter.

**(2)** The Rules adopted by the State Board shall include the following:

- (a) Appropriate and timely identification of students with disabilities.
- (b) Diagnosis, evaluation, and classification by qualified personnel.
- (c) Standards for classes and services.
- (d) Provision for multi-district programs.
- (e) Provision for delivery of service responsibilities.
- (f) Certification and qualifications for instructional staff.
- (g) Services for dual enrollment students attending public school on a part-time basis under Section 53A-11-102.5.

**(3)** (a) The State Board shall have general control and supervision over all educational programs for students within the state who have disabilities. (b) Those programs must comply with Rules adopted by the State Board under this section.

**(4)** The state superintendent of public instruction shall enforce this chapter.

**53A-15-302. (1)** The State Board of Education shall appoint a state director of special education, who shall be qualified and experienced in the area of special education.

**(2)** The state director has the following duties and responsibilities:

- (a) To assist the state board and state superintendent of public instruction in performing their duties under this chapter.
- (b) To encourage and assist school districts and other authorized public agencies in the organization of programs for students with disabilities.
- (c) To provide general supervision over all public programs offered through a public school, public agency, public institution, or private agency for students with disabilities.
- (d) To cooperate with private schools and other private agencies concerned with educating and training students with disabilities.
- (e) To coordinate all state programs for students with disabilities.

**53A-15-303. (1)** Each school district shall provide, either singly or in cooperation with other school districts or public institutions, a free appropriate education program for all students with disabilities who are residents of the district. The program shall include necessary special facilities, instruction, and education-related services. The costs of a district's program, or a district's share of a joint program, shall be paid from district funds.

- (2) School districts that provide special education services under this chapter in accordance with applicable Rules of the State Board of Education shall receive reimbursement from the Board under Chapter 17, Title 53A, the Minimum School Finance Act, and other applicable laws.
- (3) A school district may, singly or in cooperation with other public entities, provide education and training for persons with disabilities who are younger than 3 or older than 21. The cost of such a program may be paid from fees, contributions, and other funds received by the district for support of the program, but may not be paid from public education funds.

In order to obtain funds under Part B of the Individuals with Disabilities Education Act (IDEA-B), the State Office of Education must submit to the U.S. Department of Education, on behalf of the State of Utah as a whole, written policies and procedures governing the operation of special education programs, and must comply with a series of federal administrative requirements described in these Rules. Therefore, all provisions under Part B of the Individuals with Disabilities Education Act apply to each political subdivision of the state that is involved in the education of students with disabilities, irrespective of whether the subdivision receives any funds under IDEA-B. This includes state and local juvenile and adult correctional facilities. The requirements of Part B are binding on each LEA that has direct or delegated authority to provide special education and related services in the State of Utah.

## **VI. B. PROGRAM MONITORING AND EVALUATION.**

- 1. The Utah State Office of Education is responsible for the monitoring and evaluation of all public agencies within the State of Utah involved in the education of students with disabilities, ages 3 through 21. Consistent with federal efforts to create a monitoring system that focuses on program effectiveness and student results, the State Office of

Education has developed a model that emphasizes a systematic approach to improve and sustain the service delivery system and to positively effect student success. This monitoring system is called the Program Improvement Plan (PIP). The system involves a partnership between the LEA and the USOE and is one of active strategic planning and continuous improvement within the framework of compliance, rather than episodic procedural monitoring only.

2. The monitoring process developed by the USOE will schedule LEAs to enter the process on a staggered five-year cycle. Technical assistance and support are available to LEAs from the USOE throughout the process.

#### **VI. C. PROVISION OF TECHNICAL ASSISTANCE.**

1. Each LEA in the state has been assigned a USOE Special Education Specialist for technical assistance (known as a “TA”). The USOE TAs are responsible for establishing and maintaining communication links with their assigned LEAs as well as offering technical assistance to support LEAs in providing appropriate special education services to students with disabilities. The TAs also assist LEA administrative and program staff in developing and delivering inservice training programs designed to provide personnel with the skills and competencies they need in order to work effectively with students with disabilities. In essence, they are front line USOE staff who assist in assuring continued compliance with state and federal law, including the resolution of allegations of noncompliance received under the state’s complaint resolution procedures.
2. TAs provide continuing support to LEAs on a regular schedule and on a specific request basis. This mechanism provides for a linkage between LEAs and the USOE, resulting in immediate availability of support to LEAs in response to emerging and long-term issues. Additionally, the state’s TA system facilitates USOE familiarity with available LEA resources and their configuration.

#### **VI. D. PERFORMANCE GOALS AND INDICATORS.**

1. The USOE has established goals for the performance of students with disabilities in the state that promote the purposes of these Rules as specified in Rule I.A., and are consistent, to the maximum extent appropriate, with other goals and standards for all students established by the state.
2. The USOE has established performance indicators that the state will use to assess progress toward achieving those goals that, at a minimum, address the performance of students with disabilities on assessments, dropout rates, and graduation rates.
3. The performance goals and indicators are contained in the State Improvement Plan (SIP), required federally, and available for public examination. Every two years, the USOE will report to the Secretary, United States Department of Education, and the public on the progress of the state, and of students with disabilities in the state, toward meeting the goals established under this section.

4. Based on its assessment of the progress specified in number 3 above, the USOE will revise its State Improvement Plan (SIP) as needed to improve its performance.

## **VI. E. PARTICIPATION IN ASSESSMENTS.**

1. The Utah State Office of Education:
  - a. Maintains information demonstrating that students with disabilities are included in general state- and district-wide assessment programs with appropriate accommodations and modifications in administration, if necessary.
  - b. Has developed guidelines for the participation of students with disabilities in alternate assessments for those students who cannot participate in state- and district-wide assessment programs.
  - c. Prior to July 1, 2000, will provide alternate assessments it has developed to LEAs, for those students with disabilities who cannot participate in state- and district-wide assessment programs.
2. No later than July 1, 2000, LEAs shall conduct the alternate assessments described in this section.

## **VI. F. REPORTS RELATING TO ASSESSMENTS.**

1. In implementing the requirements under Part B of the IDEA and these Rules relating to state- and district-wide assessments (Rule VI.E.), the USOE shall make available to the public, and report to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled students, the following information:
  - a. The number of students with disabilities participating in regular assessments and the number participating in alternate assessments.
  - b. The performance results of the students described in this section, if doing so would be statistically sound and would not result in the disclosure of performance results identifiable to individual students:
    - (1) On regular assessments, beginning not later than July 1, 1998.
    - (2) On alternate assessments, not later than July 1, 2000.
2. Reports to the public relating to state- and district-wide assessments must include:
  - a. Aggregated data that include the performance of students with disabilities together with all other students.
  - b. Disaggregated data on the performance of students with disabilities.

3. Data related to the performance of students described in 1.b. (1) and (2), above, must be disaggregated:
  - a. For assessments conducted after July 1, 1998.
  - b. For assessments conducted before July 1, 1998, if the state is required to disaggregate the data prior to July 1, 1998.

#### **VI. G. COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT (CSPD).**

1. **General requirements.** The USOE has developed and is implementing a Comprehensive System of Personnel Development (CSPD) that is consistent with the purposes of Part B and Part C of the IDEA and is designed to ensure an adequate supply of qualified special education, regular education, and related services personnel. The USOE meets the CSPD through its State Improvement Grant (SIG), through the United States Department of Education (through 2004), which will be updated at least every five years.
2. **Adequate supply of personnel.** In its CSPD plan, the USOE includes an analysis of state and local needs for professional development for personnel to serve students with disabilities that includes:
  - a. The number of personnel providing special education and related services.
  - b. Relevant information on current and anticipated personnel vacancies and shortages (including the number of personnel with temporary certification), and on the extent of certification or retraining necessary to eliminate these shortages, that is based on existing assessments of personnel needs.
3. **Improvement strategies.** In its CSPD plan, the USOE describes the strategies it is currently using and those it plans to use in addressing personnel needs it has identified in its analysis. These strategies include how it will address identified needs for inservice and preservice preparation to ensure that all personnel who work with students with disabilities (including professional and paraprofessional personnel who provide special education, general education, related services, or early intervention services) have the skills and knowledge necessary to meet the needs of students with disabilities. The plan includes a description of how the USOE will:
  - a. Prepare general education, special education personnel, and paraprofessionals with the content knowledge and collaborative skills needed to meet the needs of students with disabilities, including how the USOE will work the other states on common certification criteria.
  - b. Prepare professionals and paraprofessionals in the area of early intervention with the content knowledge and collaborative skills needed to meet the needs of infants and toddlers with disabilities.

- c. Work with institutions of higher education and other entities that, on both a pre-service and an inservice basis, prepare personnel who work with students with disabilities to ensure that those institutions and entities develop the capacity to support quality professional development programs that meet state and local needs.
- d. Work to develop collaborative agreements with other states for the joint support and development of programs to prepare personnel for which there is not sufficient demand within a single state to justify support or development of a program of preparation.
- e. Work in collaboration with other states, particularly neighboring states, to address the lack of uniformity and reciprocity in credentialing of teachers and other personnel.
- f. Enhance the ability of teachers and others to use strategies, such as behavioral interventions, to address the conduct of students with disabilities that impedes the learning of students with disabilities and others.
- g. Acquire and disseminate, to teachers, administrators, school board members, and related services personnel, significant knowledge derived from educational research and other sources, and how the USOE will, if appropriate, adopt promising practices, materials, and technology.
- h. Recruit, prepare, and retain qualified personnel, including personnel with disabilities and personnel from groups that are underrepresented in the fields of regular education, special education, and related services.
- i. Integrate the CSPD plan, to the maximum extent possible, with other professional development plans and activities, including plans and activities developed and carried out under other state and federal laws addressing personnel recruitment and training.
- j. Provide for the joint training of parents and special education, related services, and general education personnel.

## **VI. H. PERSONNEL STANDARDS.**

- 1. Consistent with the provisions of Part B of the IDEA, the USOE has established and maintains standards to ensure that personnel necessary to carry out the purposes of Part B are appropriately and adequately prepared and trained. The USOE's system for ensuring that personnel are appropriately and adequately prepared and trained includes conformance with the following definitions:
  - a. "Appropriate professional requirements" are those entry-level requirements that are based on the highest requirements in the state applicable to the profession or

discipline in which a person is providing special education or related services, and that establish the qualifications for personnel providing such services under Part B of the IDEA to students with disabilities who are served by state, local, and private agencies.

- b. “Highest requirements in the state applicable to a specific profession or discipline” are the highest entry-level academic degrees needed for any state-approved or -recognized certification, licensing, registration, or other comparable requirements that apply to that profession or discipline.
  - c. “Profession or discipline” is a specific occupational category that:
    - (1) Provides special education and related services to students with disabilities under Part B of the IDEA.
    - (2) Has been established or designated by the state.
    - (3) Has a required scope of responsibility and degree of supervision.
    - (4) Is not limited to traditional occupational categories.
  - d. “Qualified personnel” means personnel who have met USOE-approved or USOE-recognized certification, licensing, registration, paraeducators qualification standards, or other comparable requirements that apply to the area in which the individuals are providing special education or related services.
  - e. “State-approved or recognized certification, licensing, registration, or other comparable requirements” are the requirements that the state legislature either has enacted or has authorized the USOE to promulgate through rules to establish the entry-level standards for employment in a specific profession or discipline in the state.
  - f. “Policies and procedures” refer to those relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out the purposes of Part B of the IDEA are appropriately and adequately prepared and trained. The policies and procedures must provide for the establishment and maintenance of standards that are consistent with any state-approved or state-recognized certification, licensing, registration, or other comparable requirements that apply to the profession or discipline in which a person is providing special education or related services.
- 3. The USOE has determined the specific occupational categories required to provide special education and related services within the state and shall revise or expand those categories as needed.
  - 4. Nothing in this section requires a state to establish a specified training standard (e.g., a masters degree) for personnel who provide special education and related services under Part B of the IDEA.



5. For employment of personnel in specific professions or disciplines that have only one entry-level academic degree, the USOE may modify that standard as necessary to ensure the provision of FAPE to all students with disabilities in the state.
6. To the extent that the state's standards for a profession or discipline, including standards for temporary or emergency licensure, are not based on the highest requirements in the state applicable to a specific profession or discipline, the USOE shall provide procedures for notifying applicable agencies and personnel of the steps and timelines it has established for the retraining or hiring of personnel to meet appropriate professional requirements in the state.
7. In meeting the requirements of this section, the USOE maintains, on file and available to the public, current information describing the status of applicable standards for each profession or discipline in which personnel are providing special education and related services, consistent with the highest requirements in the state for that profession or discipline.
8. In identifying the highest requirements in the state for purposes of this section, the requirements of all state statutes and the Rules of all state agencies applicable to serving students with disabilities must be considered.
9. Policy to Address Shortage of Personnel.
  - a. In implementing these Rules, the USOE requires that LEAs make an ongoing good faith effort to recruit and hire appropriately and adequately trained personnel to provide special education and related services to students with disabilities, including, in a geographic area of the state where there is a shortage of personnel that meet these qualifications, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet USOE standards within three years.
  - b. If the established three-year timeline has been reached, the USOE shall continue to exercise the option specified in 9.a., above, for training or hiring all personnel in a specific profession or discipline to meet appropriate professional requirements in the state.
  - c. If instructional needs exceed available personnel who meet appropriate professional requirements in the state for a specific profession or discipline, the USOE shall exercise the mechanism described below for serving students with disabilities by:
    - (1) Reviewing recommendations from LEAs as to the most qualified available individual(s)' qualifications, and tailoring an individual plan by which the individual(s) shall meet the required standards.
    - (2) Utilizing temporary or emergency certification for personnel consistent with this section.

- d. When the state experiences continued shortages of qualified personnel, even after taking the measures specified above, the USOE shall address those shortages in its Comprehensive System of Personnel Development (CSPD).
- 10. The USOE allows paraprofessionals and assistants who are appropriately trained and supervised, in accordance with these Rules, to be used in meeting the requirements of Part B of the IDEA and these Rules, to assist in the provision of special education and related services to students with disabilities.

## **VI. I. INTERAGENCY COLLABORATION.**

It is the policy of this state that all agencies that provide services to persons with disabilities coordinate and ensure that services and supports are provided in a cost-effective manner. It is the intent of the legislature that services and supports provided under this chapter be coordinated to meet the individual needs of persons with disabilities; and, within appropriations authorized by the legislature, the state director of special education, the executive director of the Utah State Office of Rehabilitation, the executive director of the Department of Human Services, and the family health services director within the Department of Health, or their designees, and the affected local school district shall cooperatively develop a single coordinated education program, treatment services, and individual and family supports for students entitled to a free appropriate education under 62A-5a-105, who also require services from the Department of Human Services, the Department of Health, or the Utah State Office of Rehabilitation.

- 1. **Coordinating Council for People with Disabilities (CCPD).** The CCPD mandated by UCA 62A-5a-103 shall consist of:
  - a. The director of the Division of Services for People with Disabilities within the Department of Human Services or his designee.
  - b. The director of Family Health Services Programs, appointed under Section 26-10-3, or his designee.
  - c. The executive director of the Utah State Office of Rehabilitation or his designee.
  - d. The state director of Special Education, or his designee.
  - e. The director of the Division of Health Care Financing within the Department of Human Services, or his designee.
  - f. The director of the Division of Mental Health within the Department of Human Services, or his designee.
  - g. The superintendent of Schools for the Deaf and the Blind, or his designee.
  - h. A person with a disability, a family member of a person with a disability, or an advocate for persons with disabilities appointed by the members listed in subsections (a) through (g).

The CCPD has authority, if local or individual efforts have failed, including those of Local Interagency Councils (LICs), to coordinate the appropriate transition of persons with disabilities who receive services and support from one state agency to receive services and support from another state agency; coordinate policies governing the provision of services and support for persons with disabilities by state agencies; and consider issues regarding eligibility for services and support and, where possible, develop uniform eligibility standards for state agencies.

2. **Local Interagency Councils (LICs).** Each school district shall participate in a Local Interagency Council (LIC), which addresses general staffing for individual at-risk cases, which require services from more than one agency (UCA 63-75-5.7). Membership on those local councils shall include local representatives from the following: (a) Child welfare; (b) developmental disabilities; (c) education; (d) juvenile justice; (e) mental health; (f) parents; (g) substance abuse; and (h) youth corrections.
  - a. The members of the local interagency council specified in subsections (a)(i) through (ix) shall select three parents from the local community to serve on the local interagency council, representative of families with children.
  - b. The local interagency council shall: (1) provide general staffing for individual at-risk cases which require services from more than one agency, (2) provide services to meet the needs of individual cases or create new services to fill gaps in current service continuum, (3) develop an individualized and coordinated service plan for each child or youth at risk and his family, and (4) establish a case management process to implement individualized and coordinated service plans.
3. Utah's Administrative Procedures Act details the procedures by which issues of program and financial responsibility are determined and conflicts arising from interagency efforts are resolved. The Administrative Procedures Act also identifies procedures under which the LEAs and other public agencies may initiate proceedings in order to secure reimbursement from agencies that are parties to an agreed-upon education and treatment plan, or to otherwise implement the provisions of the agreement. The Coordinating Council for People with Disabilities (CCPD) is the state-level policy body responsible, under guidance of the Administrative Procedures Act and under mandate from the Omnibus Disability Services Act (1991), for:
  - a. Coordinating and ensuring that services and supports are provided in a cost-effective manner. It is the intent of the legislature that services and supports provided under this chapter be coordinated to meet the individual needs of persons with disabilities.
  - b. Whenever possible, regard an individual's personal choices concerning services and supports that are best suited to his/her individual needs and that promote his/her independence, productivity, and integration in community life.

4. All interagency agreements between the USOE and other state and local agencies that provide or pay for services for students with disabilities, as required under Part B, will:
  - a. Describe the role each agency plays in providing or paying for services required under Part B.
  - b. Provide for the development and implementation of interagency agreements that:
    - (1) Define the financial responsibilities of each agency for providing FAPE.
    - (2) Establish procedures for resolving interagency disputes among agencies that are the parties to these agreements.
    - (3) Establish procedures under which LEAs may initiate proceedings to secure reimbursement from agencies that are parties to the agreement or otherwise implement the agreement.
    - (4) Establish procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services.
5. If any public agency other than an educational agency is otherwise obligated under federal or state law, or assigned responsibility under state policy to provide or pay for any services that are also considered special education or related services as defined in these Rules, such as, but not limited to, related services, assistive technology devices and services, supplementary aids and services, and transition services that are necessary for ensuring FAPE to students with disabilities within the state, the LEA shall fulfill that obligation or responsibility, either directly or through contract or other arrangement.
6. The financial responsibility of each noneducational public agency described in this section, including the state Medicaid agency and other public insurers of students with disabilities, must precede the financial responsibility of the LEA (or the state agency responsible for developing the student's IEP).
7. Any noneducational public agency described in this section may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context.
8. If a public agency other than an educational agency fails to provide or pay for the special education and related services described in this section, the LEA (or state agency responsible for developing the student's IEP) shall provide or pay for these services to the student in a timely manner. The LEA may then claim reimbursement for the services from the noneducational public agency that failed to provide or pay for these services, and that agency shall reimburse the LEA in accordance with the terms set forth in this section.

**9. Children with disabilities who are covered by public insurance.**

- a. An LEA may use Medicaid or other public insurance benefits programs in which a student participates to provide or pay for services required under this section, as permitted under the public insurance program, except as provided in 9.b. below.
- b. With regard to services required to provide FAPE to an eligible student as described in this section, the LEA:
  - (1) May not require parents to sign up for or enroll in public insurance programs in order for their student to receive FAPE under Part B of the IDEA.
  - (2) May not require parents to incur an out-of-pocket expense, such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided as described in this section, but may pay the cost that the parent otherwise would be required to pay. (See number 11 below.)
  - (3) May not use a student's benefits under a public insurance program if that use would:
    - (a) Decrease available lifetime coverage or any other insured benefit.
    - (b) Result in the family paying for services that would otherwise be covered by the public insurance program and that are required for the student outside of the time the student is in school.
    - (c) Increase premiums or lead to the discontinuation of insurance.
    - (d) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

**10. Children with disabilities who are covered by private insurance.**

- a. With regard to services required to provide FAPE to an eligible child as described in these Rules, an LEA may access a parent's private insurance proceeds only if the parent provides informed consent, consistent with Rule IV.F. Each time the LEA proposes to access the parent's private insurance proceeds, it must:
  - (1) Obtain parental consent as described in this section.
  - (2) Inform the parents that their refusal to permit the LEA to access their private insurance does not relieve the LEA of its responsibility to ensure that all required services are provided at no cost to the parents.

**11. Use of Part B Funds .**

- a. If an LEA is unable to obtain parental consent to use the parent's private insurance, or public insurance when the parent would incur a cost for a specified service required under these Rules, to ensure FAPE the LEA may use its Part B funds to pay for the service.
- b. To avoid financial cost to parents who otherwise would consent to use private insurance, or public insurance if the parent would incur a cost, the LEA may use its Part B funds to pay the cost the parents otherwise would have to pay to use the parent's insurance (e.g., the deductible or co-pay amounts).

**12. Proceeds from public or private insurance .**

- a. Proceeds from public or private insurance will not be treated as program income for purposes of 34 CFR 80.25.
- b. If an LEA spends reimbursements from federal funds (e.g., Medicaid) for services under these Rules, those funds will not be considered "state or local" funds for purposes of the maintenance of effort provisions in these Rules.

**13. Construction.**

Nothing in this section should be construed to alter the requirements imposed on a state Medicaid agency, or any other agency administering a public insurance program by federal statute, regulations, or policy under Title XIX or Title XXI of the Social Security Act, or any other public insurance program.

**VI. J. REPORTING ON SUSPENSION AND EXPULSION RATES.**

- 1. Annually, LEAs shall report to the USOE on the rates of long-term suspensions and expulsions of students with disabilities and nondisabled students for the preceding school year. The USOE shall examine these data to determine if significant discrepancies are occurring:
  - a. Among LEAs in Utah.
  - b. Between nondisabled students and students with disabilities within an LEA.
- 2. If discrepancies are occurring, the USOE shall review and, if appropriate, require revisions in both state agency and LEA policies, procedures, and practices to ensure compliance with IDEA-B.
- 3. Policies, procedures, and practices to be reviewed and, if appropriate, revised, include:
  - (a) The development and implementation of IEPs.

- (b) The use of behavioral interventions.
- (c) Procedural safeguards.

#### **VI. K. PUBLIC PARTICIPATION.**

1. The USOE ensures that, prior to the adoption of any policies and procedures needed to comply with Part B of the IDEA, there are public hearings, and adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities.
2. The USOE complies with the requirement of VI.K.1., above, by maintaining documentation that, prior to the adoption of policies and procedures, the policies and procedures were subjected to a public review and comment process consistent with these Rules and in accordance with the Utah Administrative Rulemaking Act.

#### **VI. L. STATE ADVISORY PANEL ON SPECIAL EDUCATION.**

The Utah State Office of Education has established and maintains the Utah Special Education Advisory Panel (USEAP) on the education of students with disabilities for the purpose of advising the USOE with respect to special education and related services for students with disabilities, as specified in this section.

1. The membership of the State Advisory Panel, on which each member appointed by the Utah State Superintendent of Public Instruction shall serve a three-year term, shall include, but not be limited to, the following individuals that are representative of the state population, and composed of individuals involved in, or concerned with, the education of students with disabilities:
  - a. Parents of children with disabilities.
  - b. Individuals with disabilities.
  - c. Teachers.
  - d. Representatives of institutions of higher education that prepare special education and related services personnel.
  - e. State and local educational officials.
  - f. Administrators of programs for children with disabilities.
  - g. Representatives of other state agencies involved in the financing or delivery of related services to students with disabilities.

- h. Representatives of private schools and public charter schools.
- i. At least one representative of a vocational, community, or business organization concerned with the provision of transition services to students with disabilities.
- j. Representatives from state juvenile and adult corrections agencies.

***Special Rule.*** A majority of the members of the panel must be individuals with disabilities or parents of children with disabilities. At the discretion of the state Special Education Director, the committee may be expanded to include additional members who are involved in or concerned with the education of students with disabilities.

- 2. The functions of the State Advisory Committee shall include the following:
  - a. Advise the USOE of unmet needs within the state in the education of students with disabilities.
  - b. Comment publicly on any Rules or regulations proposed for issuance by the state regarding the education of students with disabilities.
  - c. Advise the USOE in developing evaluations and reporting on data to the Secretary of the U.S. Department of Education under Section 618 of the Individuals with Disabilities Education Act.
  - d. Advise the USOE in developing and implementing policies relating to the coordination of services for students with disabilities.
  - e. Advise the USOE in developing corrective action plans to address findings identified in Federal monitoring reports under Part B of the IDEA.
  - f. Advise the USOE on the education of eligible students with disabilities who have been convicted as adults and incarcerated in adult prisons.
- 3. The State Advisory Panel shall:
  - a. Meet as often as necessary to conduct its business.
  - b. By July 1 of each year, submit an annual report of panel activities and suggestions to the USOE. This report shall be made available for dissemination to the public in a manner consistent with other public reporting requirements under part B of the IDEA.
  - c. Ensure that official minutes are kept on all panel meetings and shall be made available to the public upon request.



- d. Announce all panel meetings and agenda items enough in advance of the meeting to afford interested parties a reasonable opportunity to attend. Meetings must be open to the public.
  - e. Ensure that interpreters and other necessary services are provided at panel meeting for panel members or participants.
4. The members of the State Advisory Panel shall serve without compensation, but the state shall reimburse panel members for reasonable and necessary expenses for attending meetings and performing duties.

## **VI. M. ALLOCATION AND USE OF PART B (IDEA-B) FUNDS.**

The general administration and disbursement of Part B funds by the USOE conforms to the following policy:

- 1. Except as provided in Rule VII.B.5., federal funds paid to the state for students with disabilities under Part B of the Individuals with Disabilities Education Act (IDEA-B), shall be used to supplement and not supplant the level of federal, state, and local funds, including funds that are not under the direct control of the USOE or Local Education Agencies (LEAs), expended for special education and related services to students with disabilities.
- 2. The state will not reduce, on either a total or per-capita basis, the amount of state financial support for special education and related services for students with disabilities, or otherwise made available because of the excess costs of educating those students, below the amount of that support for the preceding fiscal year.
- 3. Procedures governing the use of Part B funds for state administration, LEA entitlements, and state discretionary support (i.e., used to supplement LEA entitlements) of a free and appropriate public program of special education and related services are as follows:
  - a. State Administration.
    - (1) The Utah State Office of Education (USOE) shall use the allowable funds as determined by the Office of Special Education programs (OSEP) Fiscal Year for administrative costs related to carrying out the provisions of Part B of the IDEA. The USOE shall utilize state administrative funds available under Part B for:
      - (a) Administration of state activities under Part B of the Act and for planning at the state level, including planning, or assisting in the planning, of programs or projects for the education of students with disabilities.

- (b) Approval, supervision, monitoring, and evaluation of the effectiveness of local programs and projects for the education of students with disabilities.
  - (c) Technical assistance to LEAs with respect to the requirements of Part B of the Act.
  - (d) Leadership services for the program supervision and management of special education activities for students with disabilities.
  - (e) Other state leadership activities and consultative services.
- b. Sub-grants to LEAs for capacity building and improvement shall be based upon the availability of federal funds for any given fiscal year. The USOE may establish priorities in awarding these sub-grants on a competitive or targeted basis. In any case, sub-grant funds are to be used by LEAs to assist them in providing direct services and in making systemic changes to improve results for students with disabilities through one or more of the following:
  - (1) Direct services, including alternative programming for students who have been expelled from school, and services for students in correctional facilities, students enrolled in state-operated or state-supported schools, and students in charter schools.
  - (2) Addressing needs or carrying out improvement strategies identified in the State's Improvement Plan under sub-part D of the IDEA.
  - (3) Adopting promising practices, materials, and technology, based on knowledge derived from educational research and other sources.
  - (4) Establishing, expanding, or implementing interagency agreements and arrangements between LEAs and other agencies or organizations concerning the provision of services to students with disabilities and their families.
  - (5) Increasing cooperative problem-solving between parents and school personnel, and promoting the use of alternative dispute resolution.
- c. State Discretionary Funds for Direct and Support Services.
  - (1) The Utah State Office of Education shall use the portion of its allocation it does not use for administrative costs for support and direct services, including technical assistance and personnel development and training.
  - (2) These funds may also be used for the administrative costs of the USOE's monitoring and complaint investigations to the extent that these costs

exceed the administrative costs for monitoring and complaint investigations incurred during Fiscal Year 1985.

- d. Other uses of state agency allocations include:
  - (1) The establishment and implementation of the mediation process required by Part B of the IDEA, including providing for the costs of mediators and support personnel.
  - (2) Activities at the state and local levels to meet the performance goals established by the state under Rule VI.D., and to support implementation of the State Improvement Plan as described in Rule VI.G.
  - (3) To supplement other amounts used to develop and implement a statewide coordinated services system designed to improve results for children and families, including children with disabilities and their families, but not to exceed one percent of the amount received by the state under Section 611 of the IDEA. This system must be coordinated with and, to the extent appropriate, build on the system of coordinated services developed by the state under Part C of the IDEA.
- e. Funds disbursed under Section 619 of Part B may only be expended for use in preschool special education programs, ages 3 through 5, inclusive.
- f. The USOE may use the funds retained under this section directly or distribute them to LEAs on a competitive, targeted, or formula basis.
- g. For the purposes of this section:
  - (1) **“Direct services”** means services provided to a student with disabilities by USOE directly, by contract, or through other arrangements.
  - (2) **“Support services”** includes implementing the Comprehensive System of Personnel Development; recruitment and training of mediators, hearing officers, and surrogate parents, and public information and parent training activities related to a free appropriate public education for students with disabilities.
- 4. Annually, the USOE shall notify each eligible LEA of the availability of Part B funds. (See Rule VII. A., LEA Eligibility for Part B Funds.)
  - a. Annual requests for Part B funds shall be submitted to the Special Education Services Unit for review and recommendation for approval.
  - b. Personnel of the Special Education Services Unit shall initially review the request for consistency with federal requirements and will approve appropriate requests.

- c. An LEA that receives approval for funding shall be notified in writing of:
    - (1) The amount of the grant.
    - (2) The period during which the district may obligate the funds.
    - (3) The federal requirements that apply to the grant.
  - d. If an LEA makes a significant amendment to its policies and procedures, the district shall use the same steps as those noted in Rule VII. A. 1. for submitting original policies and procedures. The state's procedures for approving amended policies and procedures are also contained in Rule VII. A. 4.
5. If the USOE determines that an LEA is adequately providing a free appropriate public education to all students with disabilities residing in the area served by the LEA with state and local funds, the Part B federal funds may be reallocated (or portions of those funds which are not required to provide special education and related services) to other LEAs within the state that are not adequately providing special education services to all students with disabilities residing in the areas served by the other LEAs.
6. The USOE shall **not** distribute funds to a school district in any fiscal year if the LEA:
- a. Has not provided the information needed to establish the eligibility of the district under Part B of the IDEA.
  - b. Is unable to establish and maintain programs of free appropriate public education that meet the requirements of these Rules.
  - c. Is unable or unwilling to be consolidated with one or more LEAs in order to establish and maintain the programs.
  - d. Has one or more children with disabilities who can best be served by a regional or state program or service delivery system designed to meet the needs of these children.
  - e. Has not implemented the provisions of a due process hearing officer's decision, or the results of an expedited due process hearing under the Discipline Procedures, Rule V., which was adverse to the district, a mediated agreement, or a complaint resolution.
  - f. Has failed to develop an improvement plan satisfactory to the USOE to eliminate compliance deficiencies found through state monitoring, a complaint investigation, or a due process hearing order.
7. If the state does not distribute Part B funds to an LEA, the USOE shall use those funds to ensure the provision of a free appropriate public education to students with disabilities

residing in the area served by the LEA either directly, by contract, or through other arrangements. The state may provide special education and related services in the manner and at the location the state considers appropriate (including regional and state centers), consistent with the requirements of these Rules, including Rule III.R., LRE.

8. If the LEA is found to be in noncompliance with the provisions of the IDEA and the requirement for submission of local policies and procedures, as described in USOE policy, the LEA shall be given reasonable notice and provided an opportunity for a hearing.
  - a. The USOE shall provide the LEA with notice and an opportunity for a hearing if it alleges that any of the actions taken by the LEA violated a state or federal statute or regulation when the USOE:
    - (1) Orders, in accordance with a final state monitoring report and audit resolution determination, the repayment of misspent or misapplied federal funds.
    - (2) Terminates further assistance for an approved project or application, in whole or part.
    - (3) Declines to provide to the LEA funds in amounts in accordance with the requirements of Part B.
  - b. The USOE shall provide an opportunity for a hearing for any LEA, either before or after disapproval of the LEA's eligibility, which is made under the provisions of Part B of the IDEA, or before withholding Part B funds resulting from noncompliance with provisions of the IDEA by the LEA.
  - c. If the SEA, after reasonable notice and an opportunity for a hearing, finds that an LEA or state agency that has been determined to be eligible under this section is failing to comply with any requirement described in §§300.200-300.250, the SEA shall reduce or may not provide any further payments to the LEA or state agency until the SEA is satisfied that the LEA or state agency is complying with that requirement.
  - d. If an LEA disagrees with the decision of the USOE, it shall request a hearing within thirty (30) days of the action.
  - e. Within thirty (30) days after it receives a request for a hearing, the USOE shall hold a hearing on the record and shall review its action.
  - f. No later than ten (10) days after the hearing, the USOE shall issue its written ruling, including findings of fact and reasons for the ruling.
  - g. If the USOE determines that its action was contrary to state or federal statutes, regulations, or rules that govern the program, the USOE shall rescind its action.

- h. If the USOE does not rescind its final action after reviewing its decision, the LEA may appeal the decision to the U.S. Department of Education, Secretary of Education.
  - i. The appeal must be filed within twenty (20) days after the LEA is notified of the final actions of the USOE.
  - j. If the USOE's decision is supported by substantial evidence, the U.S. Secretary of Education shall rule in favor of the USOE. The LEA may then request judicial review.
  - k. The U.S. Secretary of Education may also issue such interim orders to the USOE as he or she may decide are necessary and appropriate, pending appeal or review.
  - l. If the U.S. Secretary of Education determines that the action of the USOE was contrary to federal statutes or regulations that govern the program, the Secretary shall issue an order that requires the USOE to take appropriate action.
  - m. If the USOE does not comply with any provision of this section, or with any order of the U.S. Secretary of Education under this section, or issue such other orders as the Secretary deems appropriate to achieve compliance.
  - n. The USOE may appeal the decision of the Secretary to the courts for judicial review.
  - o. The USOE shall make available, at reasonable times and places to each LEA, all records of the agency pertaining to any review or appeal, and the LEA shall be provided records of other applicants upon request.
  - p. The SEA shall reduce or may not provide any further payments to the LEA or state agency until the SEA is satisfied that the LEA or state agency is complying with that requirement.
  - q. Any LEA in receipt of a notice described in Rule 8.a., above, shall, by means of public notice, take the measures necessary to bring the pendency of an action pursuant to this section to the attention of the public within the jurisdiction of the agency.
9. If the USOE determines that an LEA is unable to establish and maintain programs of sufficient size and scope to effectively meet the educational needs of students with disabilities, a consolidated request for Part B funds shall be required in order to establish joint eligibility.
- a. Annually, the state Director of Special Education shall notify those LEAs within the state that are required to submit a consolidated request.

- b. A consolidated request shall meet the same minimum requirements of a single district request, including adopting policies and procedures consistent with these Rules, and must be signed by the superintendent of each participating LEA.
- c. LEAs participating in a consolidated request shall be jointly responsible for implementing a program of free appropriate public education for all their students with disabilities.
- d. Each LEA participating in a consolidated request shall use an accounting system that permits identification of the costs paid for under its subgrant.
- e. The state shall not make a subgrant that exceeds the sum of the entitlements of the separate local school districts.
- f. The provision of services through the establishment of joint eligibility must be consistent with Rule III.R., LRE.

## **VI. N. RECORDS RETENTION REQUIREMENTS.**

As required by federal regulations, all records related to federal grant funds and compliance shall be retained by the USOE and the LEA for four years (or longer if under an audit exception) after completion of the activity for which they used the funds.

- 1. Records related to grant funds shall be kept that fully show:
  - a. The amount of funds under the grant.
  - b. How the funds were used.
  - c. The total cost of the project.
  - d. The share of that cost provided from other sources.
  - e. Other records to facilitate an effective audit.
- 2. Records related to program compliance shall include:
  - a. Interim and final monitoring reports.
  - b. Negotiated action plans, including documentation of corrective actions taken by the LEA and the USOE.
  - c. Actions taken by an LEA to resolve a formal complaint with the USOE.
  - d. Documentation supporting the implementation of a hearing officer's final decision in a due process hearing.

- e. Child count and S-3 documents, to include, but not be limited to, entry/exit dates, locations, and service codes.
- f. Individual student records, including IEPs, evaluation data, and required consent and prior notice forms.



#### **VI. O. PRIVATE SCHOOL APPROVAL.**

The Utah State Office of Education shall ensure that a student with disabilities who is placed in a private school or facility by an LEA, as a means of providing a free and appropriate public education through an IEP, has all the rights of a student with disabilities who is served by an LEA. Prior to placement of the student, the USOE and the LEA will review the program of the private school, to determine its compliance with state and federal regulations for serving students with disabilities.

#### **VI. P. DISSEMINATION OF INFORMATION.**

The Utah State Office of Education shall disseminate information throughout the state on program requirements and successful practices in the education of students with disabilities. This shall be ongoing and include activities such as conducting statewide inservice training, publishing annual committee reports, developing technical assistance papers, and sponsoring state conferences.

#### **VI. Q. FISCAL AUDITING PROCEDURES.**

1. The Utah State Office of Education shall adopt and implement fiscal auditing procedures consistent with federal single audit requirements. Annually, the Division of School Finance and Business shall conduct an on-site audit review of fiscal records in every school district in the state. The results of these reviews shall be shared with the Special Education Unit for the primary purposes of:
  - a. Coordinating the inservice training of district personnel in record keeping procedures.
  - b. Incorporating the findings into the state's Program Improvement Plan (PIP) process in order to reduce duplication of effort.

## **VII. ADMINISTRATION AND GOVERNANCE.**

### **VII. A. LEA ELIGIBILITY FOR IDEA-B FUNDS.**

1. Annually, the Utah State Office of Education (USOE) shall notify Local Education Agencies (LEAs) of the availability of federal funds under Part B of the Individuals with Disabilities Education Act (IDEA). In order to receive IDEA-B flow-through funds, each LEA must have in effect policies, procedures, and programs that are consistent with Utah State Board of Education (USBE) Special Education Rules. The LEA must have on file with the USOE the policies and procedures described in this section, including any supporting documentation necessary to ensure their implementation.
2. At a minimum, the LEA must address the following components:
  - a. General Information
  - b. Budget Information and Categories
  - c. Assurances
  - d. Narrative
    - (1) Introduction
    - (2) Requirements
      - (a) General program description
      - (b) Free Appropriate Public Education/exception to FAPE for certain ages
      - (c) Full Educational Opportunity Goal/timetable
      - (d) Child Find
      - (e) Evaluation and determination of eligibility
      - (f) Confidentiality of personally identifiable information
      - (g) Individualized Education Programs
      - (h) Procedural safeguards
      - (i) Least Restrictive Environment
      - (j) Transition of children from Part C to preschool program
      - (k) Performance goals and indicators
      - (l) Participation in assessments/reporting assessments
      - (m) Public participation
      - (n) Methods of ensuring services
      - (o) Comprehensive System of Personnel Development

- (p) Supervision
  - (q) Students in private schools
  - (r) Local or Regional Interagency Council
  - (s) Use of Part B funds
  - (t) Personnel standards
- e. Additional procedures and information which the USOE may require in order to meet federal requirements, including suspension and expulsion rates.
- 3. If an LEA has on file with the USOE policies and procedures that demonstrate that the LEA meets any requirement of this section, including any policies and procedures filed under IDEA-B prior to June 4, 1997, the USOE shall consider the LEA to have met the requirement for purposes of receiving Part B funds under the IDEA.
- 4. Policies and procedures submitted by the LEA, in accordance with this section, remain in effect until:
  - a. The LEA submits modifications to the USOE that the LEA determines are necessary. The provisions of these Rules apply to any modifications in an LEA's policies and procedures in the same manner and to the same extent as the LEA's original policies and procedures.
  - b. The USOE requires an LEA to modify its policies and procedures, but only to the extent necessary to ensure the LEA's compliance with Part B of the IDEA, if:
    - (1) After June 4, 1997, the provisions of the IDEA or its implementing regulations are amended.
    - (2) There is a new interpretation of the IDEA by federal or state courts.
    - (3) There is an official finding of noncompliance with federal or state law or regulations.
- 5. The LEA must have on file with the USOE information to demonstrate, to the satisfaction of the USOE, that it will make available to parents of students with disabilities and to the general public all documents relating to the eligibility of the agency under Part B of the IDEA.

## **VII. B. USE OF PART B FUNDS BY THE LEA.**

- 1. The LEA must have on file with the USOE information to demonstrate that amounts provided to the LEA under Part B of the IDEA:
  - a. Will be expended in accordance with the applicable provisions of these Rules.

- b. Will be used only to pay the excess costs of providing special education and related services to students with disabilities, consistent with these Rules.
  - c. Will be used to supplement state, local, and other federal funds and not to supplant those funds.
- 2. Except as noted below, funds provided to the LEA under Part B of the IDEA may not be used to reduce the level of expenditures for the education of students with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year.
- 3. Annually, the LEA must have on file with the USOE information to demonstrate that the maintenance of effort requirements of this section are met.
- 4. An LEA may reduce the level of expenditures by the LEA under Part B of the IDEA below the level of those expenditures for the preceding fiscal year if the reduction is attributable to:
  - a. The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel, who are replaced by qualified, lower-salaried staff.

**NOTE:** In order for an LEA to invoke the above exception, the LEA must ensure that those voluntary retirements or resignations and replacements are in full conformity with existing school board policies in the LEA, the applicable collective bargaining agreement in effect at that time, and applicable state statutes.

- b. A decrease in the enrollment of students with disabilities.
  - c. The termination of the obligation of the LEA, consistent with these Rules, to provide a program of special education to a particular student with a disability that is an exceptionally costly program as determined by the USOE, because the student has left the jurisdiction of the LEA, has reached the age at which the obligation of the LEA to provide FAPE to the student has terminated, or no longer needs the program of special education.
  - d. The termination of costly expenditures for long-term purchases such as the acquisition of equipment or the construction of school facilities.
- 5. For any fiscal year in which federal funds for Part B of the IDEA exceeds \$4.1 billion dollars, an LEA may treat as local funds up to 20 percent of the amount of funds it receives under Part B of the IDEA that exceeds the amount it received under Part B of the IDEA for the previous fiscal year. The requirements regarding supplanting and maintenance of effort described above do not apply with respect to the amount that may be treated as local funds under this section.

6. If the USOE determines that an LEA is not meeting the requirements of these Rules, the USOE may prohibit the LEA from treating funds received under part B of the IDEA as local funds under this section for any fiscal year, but only if it is authorized to do so by the state constitution or a state statute.
7. **Schoolwide programs under Title I of the ESEA:** An LEA may use funds received under Part B of the IDEA for any fiscal year to carry out a schoolwide program under section 1114 of the Elementary and Secondary Education Act of 1965, except that the amount used in any schoolwide program may not exceed the amount received by the LEA under Part B for that fiscal year, divided by the number of students with disabilities in the jurisdiction of the LEA, and multiplied by the number of students with disabilities participating in the schoolwide program.
  - a. The funds described in this section must be considered as federal Part B funds for purposes of the calculations required for excess cost and supplanting.
  - b. The funds described in this section may be used without regard to the requirements of paragraph one, item 1.a. of this section.
  - c. Except as provided in this section, all other requirements of Part B must be met by an LEA using Part B funds in accordance with this section, including ensuring that students with disabilities in school-wide program schools receive services in accordance with a properly developed IEP, and are afforded all of the rights and services guaranteed to students with disabilities under the IDEA.
8. Funds provided to an LEA under Part B of the IDEA may be used for the costs of special education and related services, and supplementary aids and services provided in a regular class or other education-related setting to a student with a disability in accordance with the IEP of the student, even if one or more nondisabled students benefit from these services.
9. An LEA may not use more than 5 percent of the amount the agency receives under Part B of the IDEA for any fiscal year, in combination with other amounts (which must include amounts other than education funds), to develop and implement a coordinated services system designed to improve results for students and families, including students with disabilities and their families.
10. In implementing a coordinated services system under this section, an LEA may carry out activities that include:
  - a. Improving the effectiveness and efficiency of service delivery, including developing strategies that promote accountability for results.
  - b. Service coordination and case management that facilitate the linkage of IEPs under Part B of the IDEA and IFSPs under Part C of the IDEA with

individualized service plans under multiple federal and state programs, such as Title I of the Rehabilitation Act of 1973 (vocational rehabilitation), Title XIX of the Social Security Act (Medicaid), and Title XVI of the Social Security Act (supplementary security income).

- c. Developing and implementing interagency financing strategies for the provision of education, health, mental health, and social services, including transition services and related services under the IDEA.
  - d. Interagency personnel development for individuals working on coordinated services.
- 11. If an LEA is carrying out a coordinated services project under Title XI of the Elementary and Secondary Education Act of 1965 and a coordinated project under Part B of the IDEA in the same schools, the LEA shall use the amounts under this section in accordance with the requirements of that title.
  - 12. The USOE may grant authority to an LEA to permit a public school described in this section (through a school-based standing panel) to design, implement, and evaluate a school-based improvement plan described in this section for a period not to exceed 3 years.
  - 13. If the USOE grants the authority described in this section, an LEA that is granted this authority must have the sole responsibility of oversight of all activities relating to the design, implementation, and evaluation of any school-based improvement plan that a public school is permitted to design under this section.
  - 14. Each LEA may, in accordance with the above paragraph, use funds made available under Part B of the IDEA to permit a public school within the jurisdiction of the LEA to design, implement, and evaluate a school-based improvement plan that is consistent with the purposes described in the USOE's State Program Improvement Grant and that is designed to improve educational and transitional results for all students with disabilities and, as appropriate, for other students consistent with the "benefits to nondisabled students" provisions and in the public school.
  - 15. A school-based improvement plan described in this section must:
    - a. Be designed to be consistent with the purposes described in the USOE's State Improvement Grant (SIG) and to improved educational and transitional results for all students with disabilities and, as appropriate, for other students consistent with the "benefits to nondisabled students" provisions, who attend the school for which the plan is designed and implemented.
    - b. Be designed, evaluated, and, as appropriate, implemented by a school-based standing panel established in accordance with this section.
    - c. Include goals and measurable indicators to assess the progress of the public school in meeting these goals.

- d. Ensure that all students with disabilities receive the services described in their IEPs.
16. An LEA which is granted the authority to permit a public school to design, implement, and evaluate a school-based improvement plan shall:
- a. Select each school under the jurisdiction of the LEA that is eligible to design, implement, and evaluate the plan.
  - b. Require each school selected, in accordance with criteria established by the LEA, to establish a school-based standing panel to carry out the duties described in this section.
  - c. Establish:
    - (1) Criteria that must be used by the LEA in the selection of an eligible school.
    - (2) Criteria that must be used by an eligible public school in the establishment of a school-based standing panel to carry out the duties described in this section, and that ensure that the membership of the panel reflects the diversity of the community in which the public school is located and includes, at a minimum:
      - (a) Parents of students with disabilities who attend a public school, including parents of students with disabilities from unserved and underserved populations, as appropriate.
      - (b) Special education and general education teachers of public schools.
      - (c) Special education and general education administrators, or the designees of those administrators, of those public schools.
      - (d) Related services providers who are responsible for providing services to the students with disabilities who attend those public schools.
    - (3) Criteria that must be used by the LEA with respect to the distribution of funds under Part B of the IDEA to carry out this section.
  - d. Disseminate the criteria to local school district personnel and local parent organizations within the jurisdiction of the LEA.

- e. Require a public school that desires to design, implement, and evaluate a school-based improvement plan to submit an application at the time, in the manner, and accompanied by the information, that the LEA shall reasonably require.
  - f. Establish procedures for approval by the LEA of a school-based improvement plan designed under Part B of the IDEA.
- 17. In carrying out the requirements of this section, an LEA shall ensure that the parents of students with disabilities are involved in the design, evaluation, or if appropriate, implementation of school-based improvement plans in accordance with this section.
  - 18. A school-based improvement plan described above may be submitted to an LEA for approval only if a consensus with respect to any matter relating to the design, implementation, or evaluation of the goals of the plan is reached by the school-based standing panel that designed the plan.
  - 19. An LEA may approve a school-based improvement plan of a public school within the jurisdiction of the LEA for a period of 3 years, if:
    - a. The approval is consistent with the policies, procedures, and practices established by the LEA and in accordance with this section.
    - b. A majority of the parents of students who are members of the school-based standing panel, and a majority of other members of the school-based standing panel that designed the plan, agree in writing to the plan.
  - 20. If a public school within jurisdiction of an LEA meets the applicable requirements and criteria described in this section at the expiration of the 3-year approval period, the LEA may approve a school-based improvement plan of the school for an additional 3-year period.

#### **VII. C. COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT (CSPD).**

Each LEA must have on file with the USOE information to demonstrate that:

- 1. All personnel necessary to carry out Part B of the IDEA within the jurisdiction of the LEA are appropriately and adequately prepared, consistent with the requirements of Part B of the IDEA and Rule VI.G.
- 2. To the extent the LEA determines appropriate, it shall contribute to and use the CSPD of the USOE established under Rule VI.G.

#### **VII. D. PROVISION FOR LEADERSHIP.**

LEAs shall provide appropriate and specific full-time or percent of FTE leadership service for coordination and supervision of special education programs, including instructional assistance to



special education teachers. Leadership may be provided within the district, on a multi-district or regional basis, or by contracted arrangement. Appropriateness is defined as an administrative/supervisory credential with an emphasis in special education. In addition, LEAs may designate certain special educators to serve as “consulting or helping teachers” to other special education personnel.

#### **VII. E. PROVISIONS FOR DIAGNOSTIC AND ASSESSMENT PERSONNEL.**

School districts or agencies shall provide appropriate and specific identification, diagnostic and evaluation services.

#### **VII. F. FUNDED PREVALENCE OF DISABLING CONDITIONS.**

The Utah State Board of Education shall limit a district’s allocation of state special education monies to 12.18% of the district’s average daily membership (ADM). Students three and four years of age and those students turning five after September 1<sup>st</sup> who are classified as developmentally delayed are not included in the district’s 12.18% ADM maximum.

#### **VII. G. MAXIMUM CASELOADS FOR SERVICE PATTERNS.**

Local school district administration will oversee the caseload of each special educator (including psychologists, social workers, communication disorders specialists, occupational therapists, physical therapists, adaptive P.E. specialists, and any other related servers), taking into account the number of students, the hours of service per student, the pupil/teacher ratio during instruction, and the number of students with severe disabilities in the caseload.

1. At any given time, the teacher’s active caseload (head count, not ADM) for the following **resource** services (less than 180 minutes per day for grades 1-12, or less than 90 minutes per day for grade K) shall not exceed:

Resource room, two or more disabilities	35
Communication disorders	60
Hearing impairments	20
Visual impairments	20

2. At any given time, the teacher’s active caseload (head count, not ADM) for **self-contained** services (180 minutes per day or more, grades 1-12, 90 minutes per day or more, grade K) shall not exceed 15. Classes for autism, deafblindness, multiple disabilities, and/or traumatic brain injuries shall not exceed 12, with one FTE aide.
3. Preschool Services.

- a. At any given time, the teacher's active caseload ratio during a preschool session (A.M. or P.M.) shall not exceed:
  - (1) 5 students with disabilities  
6-10 students with disabilities with 1 FTE aide  
11-15 students with disabilities with 2 FTE aides
  - (2) At **no time** may a preschool teacher's maximum total active caseload exceed 30 students with disabilities.
4. At any given time, the teacher's active caseload (head count, not ADM) for the homebound/hospitalized self-contained service option for students with disabilities shall not exceed fifteen (15).
5. Districts shall adhere to these maximum teacher caseloads. The maximums stated are not intended as minimums, or as goals or standards to achieve. Generally speaking, the younger the student and/or the greater the severity of the disability, the lower the adult/student ratio should be. For example, a teacher in a self-contained class for students with moderate intellectual disabilities could serve up to 12; if students have severe disabilities, the caseload could be lower.
6. The addition of an aide into the classroom does not permit teacher caseload maximums to be exceeded.
7. Self-contained Resource: The maximum caseload for resource teachers serving self-contained students (180 minutes per day or more, grades 1-12; 90 minutes or more per day, grade K) in the resource room shall follow Table A, page 132. A maximum of ten students in the self-contained service is allowable with five resource students, for a total of 15 students by head-count, self-contained and resource combined. District administration shall take care that caseload is reflected accordingly, as outlined in Rule VII.G. above.

## **VII. H. EDUCATOR LICENSE REQUIREMENTS.**

Any professional providing services to students with disabilities must hold a Utah Professional Educator License in the area in which they provide services. This includes special education teachers, communication disorders specialists, school psychologists, school social workers, and other professionals. Physical and occupational therapists must hold a Utah State Educator License. The district superintendent shall be responsible for the assessment and the appropriateness of credentials when assigning staff members (see Appendix B for State Educator License Information).

1. Teachers managing the IEPs of students with disabilities who need instruction in **core curriculum-based** academic, behavior, and life skill demands must hold a license with Special Education as an area of concentration and mild/moderate as an endorsement.

This requirement applies regardless of setting (resource or self-contained) or category of disability.

2. Teachers managing the IEPs of students with learning/behavior/adaptive deficits, who need instruction in **functional** academic, **functional** behavior, and **functional** life skill demands, must hold a license with Special Education as an area of concentration and severe as an endorsement. This requirement applies regardless of setting (resource or self-contained) or category of disability.
3. Teachers providing service to the single categories of CD, HI, and VI must be endorsed in the category to be served.
4. Teachers assigned to teach academic subjects in secondary special education programs must, in addition to their basic or standard to teach special education, obtain not fewer than nine (9) quarter hours of state-approved college or inservice course work in each of the subject areas in which credit is awarded, or must meet the licensure renewal.
5. Teachers serving students identified as having a disability and receiving homebound or hospital instruction must be licensed as follows:
  - a. If the homebound/hospitalized student with disabilities was previously served in a resource setting, the teacher serving the student may have any regular or special education credential.
  - b. If the homebound/hospitalized student with disabilities was served through a self-contained level of service in the school, or if the home/hospital service is the placement of choice for the student by IEP directive, the teacher serving the student must have the appropriate special education license as described in #1 and #2 above.
6. School social workers and school psychologists providing services to students with disabilities must be licensed by the State Board of Education as school social workers or school psychologists (see Appendix B for standards for certification of school social workers and psychologists), or hold Utah State licensure.
7. A Special Education (birth through age 5) License is issued to fulfill the highest qualified personnel standard required by P.L. 99-457. The area of concentration will be required for teaching preschool students with disabilities. Teachers who hold an equivalent credential from out of state will be required to meet the new Utah standards when renewing. All professional personnel teaching preschool and holding a special education endorsement or regular education early childhood endorsement will be required to complete a Utah State Office of Education/Institutions of Higher Education approved training program, which will allow them to be eligible for the new Special Education (birth through age 5) License. This preservice/inservice training program and procedure is to be developed based on an analysis of presently held endorsements, and training activities as compared to the new standards.

- a. Teachers serving preschool-aged students with disabilities must hold the Special Education (Birth–Age 5) educator license.
  - b. In addition, all Special Education Rules pertaining to licensing, including standards for psychological examiners, must be adhered to.
- 8. Individuals providing psychological diagnostic services for students with disabilities must hold a Utah State credential for psychologists, state licensure, or be designated by the LEA superintendent as a psychological examiner, in accordance with standards described below.

## **VIII. STANDARDS FOR DETERMINING QUALIFICATIONS OF THE DESIGNATED PSYCHOLOGICAL EXAMINER**

- a. The LEA superintendent must have verification of the following course work and/or inservice training that qualifies such a person, holding at least a bachelor's degree, to be designated a psychological examiner:
  - (1) Course work or comparable training should include at least 18 semester hours (27 quarter hours) of sociology, psychology, social work, or educational psychology, for a person to be so designated.
  - (2) Competency in the administration, scoring, and interpretation of psychological and other individually administered procedures should also be documented.
  - (3) A list of tests/procedures the designated psychological examiner is qualified to administer.
- b. The local superintendent will specify in writing the names of those persons assigned as designated psychological examiners. The name, or list of names, will be submitted annually to the USOE, Teacher Education Licensing Section, and Special Education Section.
- c. The appropriateness of the assignment of the designated psychological examiner will be monitored annually by the single audit procedure, and scheduled in the Special Education State Monitoring procedure.

# TABLE A

## MAXIMUM CASELOAD FOR SELF-CONTAINED/RESOURCE COMBINED OPTION

**Categories Allowable:**

**All Categories, Depending on Individual Student Needs  
as Determined by IEPs.**

<b>STUDENTS--SELF-CONTAINED IN RESOURCE CLASS</b> (180 minutes per day or more, grades 1-12; 90 minutes per day or more, grade K)	<b>RESOURCE STUDENTS</b> (Less than 180 minutes per day, grades 1-12; less than 90 minutes per day, grade K)	<b>TOTAL STUDENTS</b> (Head Count)
1	32	33
2	29	31
3	26	29
4	23	27
5	20	25
6	17	23
7	14	21
8	11	19
9	8	17
10 (max)	5	15

## VIII. FUNDING.

Eligible reimbursable costs are those costs specified in these Rules. Such funds provide restricted (categorical) monies, which must be spent for the education of students with disabilities. Each year, the School Finance Law states the total number of weighted pupil units and the corresponding dollar amount, creating a base for available state funds.

### VIII. A. ALLOCATION OF STATE REVENUES FOR PROGRAMS FOR STUDENTS WITH DISABILITIES.

Each district shall receive its allocation of monies appropriated for programs for students with disabilities as provided in this subsection.

1. The State Board of Education shall use the total number of special education weighted pupil units generated during fiscal year 1989-90 as a base for the appropriation.
2. Each district shall receive a foundation allocation based on its special education weighted pupil units for fiscal year 1989-90 as compared to the state's total special education weighted pupil units for that year.
3. If monies appropriated under this section for programs for students with disabilities do not meet the costs of districts for those programs, each district shall first receive the amount generated for each student with a disability under the basic program.
4. Funds allocated but unspent must be carried as a balance the following year.
5. Funds may be spent only for direct costs, as provided in these Rules. Direct costs are those elements of cost which can be easily, obviously, and conveniently identified with the specific special education activities or programs, as distinguished from those costs incurred for several different activities or programs and whose elements are not readily identifiable with specific special education activities.
6. Allowable direct costs for approved programs for students with disabilities are as follows:

<b><u>Object codes:</u></b>	115	Properly licensed personnel in direct supervision or coordination of special education programs.
	131	Properly licensed teachers who teach students in special education programs/services.
	132	Substitute teachers.
	141	Social workers who work directly with students in special education programs/services.
	143	Properly licensed health personnel who are assigned to work with students in special education programs/services.

- 144 Properly licensed persons qualified as psychologists who are used in identifying, diagnosing, and evaluating students with disabilities, and in instructional or treatment services.
- 152 Secretarial personnel assigned to work directly with special education programs/services.
- 161 Teachers' aides and paraprofessionals (including bus aides).
- 162 Media aides.

**SPECIAL NOTE:** Personnel who are assigned to work directly with programs for students with disabilities on a part-time basis must have their salaries prorated accordingly from special education funds and other funds, and such must be documented.

- 200 Employee benefits.

Based on the number of weighted pupil units in special education within a school district, the special education program is entitled to its equitable share of the social security and retirement lines in the minimum school budget. It may be appropriate to expend state special education funds for excess costs for social security and retirement at local board discretion, consistent with the treatment of other restricted programs.

Special education funds can be used for this purpose only when the district does not receive sufficient social security and retirement funds to cover all eligible district special education employees, not to exceed the actual percent of deficit.

- 210 State retirement.
- 220 Social Security.
- 230 Local retirement (for individual special education employees).
- 240 Group Insurance. Certificated and classified personnel who are assigned to programs for students with disabilities (to be prorated, if part-time).
- 270 Industrial Insurance—Workman's Compensation
- 280 Unemployment Insurance (for individual special education employees).



- 290 Other employee benefits (for individual special education employees).
- 320 Contracted services and other costs for instructional programs, which can be traced directly to special education programs/services without the need for proration.
- 452 Rental of equipment for programs for students with disabilities.
- 580 Approved travel for personnel in conjunction with their assignments to special education programs/services.
- 610 Teaching supplies.
- 641 Textbooks.
- 644 Library books.
- 650 Instructional media/materials (periodicals).
- 660 Audio/visual materials.
- 730 Equipment for the special education programs/services.

**Following are examples of UNALLOWABLE direct costs:**

- 2300 Administration.
- 2700 Pupil transportation (provided under the transportation program).

**Function codes:** 2600 Operation and maintenance of school plant.

**Exception:** Telephone charges for the school may not be prorated to the special education program even though the school placed an extension phone in the special education area. The special education department may be billed for telephone charges only if a separate direct line is provided to the special education area specifically.

- 4000 Capitol outlay, except for equipment for programs specifically for students with disabilities.

**Object codes:** 451 Rental of land and buildings.

520 Insurance.

800 Other objects.

7. **Indirect costs are unallowable:** Indirect costs are those elements of cost necessary in the provision of a program, which are of such nature that they cannot be readily or accurately identified with the specific special education service. For example, the custodial staff may clean corridors in a school building which is used jointly by administrative, instructional, maintenance, and attendance personnel. In this case, a part of custodial salaries is an indirect expense of each service using the corridors. However, it is impossible to determine readily or accurately the amount of the salary to charge each of these services. The same is true of such supplies as paper towels or tissue, writing paper, etc.
8. **Personnel:** Where personnel serve students with disabilities and are paid from special education program funds, their entire time must be spent with the students with disabilities. If the person has other responsibilities, that portion of the person's time devoted to students with disabilities must be documented to show that the time spent in the program for students with disabilities and the proportional salary paid from special education funds are defensible.
9. **Contracted services:** Contracted services are rendered by personnel who are not on the payroll of the public agency. Funds expended for contracted services for students with disabilities are limited to those appropriate expenses authorized by the contract.
10. **General funds:** All cost of programs for students with disabilities borne by the district, which are not classified as direct costs, will come from general funds of the district.

#### **VIII.B. ADMINISTRATIVE PROCEDURES FOR DETERMINING AGGREGATE DAYS OF MEMBERSHIP.**

1. **Membership** is the sum of all days a student is a member, absent or present, of a class or school. A student is a member of a class or school from the date of entrance at the school and is placed on the current roll until official withdrawal from the class or school because of completion, dismissal, death, transfer, or administrative withdrawal. The date of withdrawal is the date on which it is officially known that the student has left school for one of the above reasons and is not necessarily the first day after the date of last attendance. In no case may the date of withdrawal be longer than 10 days after the last day of attendance, except for reasons of sickness, hospitalization, pending court investigation or action, or prior-approved trips.
2. **Official records.** To determine membership, school districts shall ensure that records of attendance are kept in each school which clearly and accurately show the entry date and exit date of each student and whether a student is absent from school ten consecutive school days. A minimum of one attendance check shall be made by the school each school day.

### **VIII.C. CORRELATION OF REPORTS.**

In order to ensure accuracy, districts shall provide a procedure for program, financial, and statistical personnel to coordinate and correlate information required by the State Office of Education. (Example: A count of students served, as reported on the S-3 report, must agree with the official attendance records maintained by the district.)

### **VIII.D. RECOVERY OF FUNDS FOR MISCLASSIFIED STUDENTS.**

These Rules describe procedures for determining the disability condition and eligibility for special education services. A student with disabilities whose diagnostic record does not support or substantiate the classification of a disability condition will be considered an erroneously classified student not eligible to be counted under the provisions of the state or federal requirements, or to receive federal or state funds.

An independent auditor shall be employed by each school district to audit its student accounting records annually and report the findings to the district Board of Education.

Reporting due dates and suggested forms and procedures are found in the Guidelines and Procedures for Conducting the Annual Statistical Audits of Fall Enrollment and Student Membership provided to school districts by the Utah State Office of Education.

The Utah State Office of Education shall review student membership and fall enrollment audits as they relate to the allocation of state funds. These audits will determine whether criteria established by the Utah State Board of Education Special Education Rules have been met by reviewing the required documentation of selected classified students. If a student is found to be misclassified, and federal and/or state expenditures have been made for direct or related service to that student, a notification of audit exception will be given to the district. Reimbursement for expenditures made on a student erroneously classified as having a disability will be made to the State Office of Education within ninety (90) days of notification of audit exception.

If a district disagrees with the findings of the independent auditor, a hearing may be requested by following the procedure outlined in these Rules (see Rule VI.M.8., Allocation and Use of Part B Funds).

# **APPENDIX A**

**UTAH**

**SPECIAL EDUCATION**

**LAW**

**UCA 53A-15-301---305**

# **Part 3. Education of Children with Disabilities**

- 53A-15-301.** Education programs for students with disabilities - Supervision by the State Board of Education - Enforcement.
- 53A-15-302.** State director of special education - Qualifications - Duties.
- 53A-15-303.** School district responsibility - Reimbursement of costs - Other programs.
- 53A-15-303.5.** Participation of students with a disability in extracurricular activities.
- 53A-15-304.** Services provided by Department of Health.
- 53A-15-304.5.** Special education assessments for children in the custody of the Division of Child and Family Services.
- 53A-15-305.** Resolution of disputes in special education - Hearing request - Timelines - Levels - Appeal process - Recovery of costs.

## **53A-15-301. Education programs for students with disabilities - Supervision by the State Board of Education - Enforcement.**

(1)(a) All students with disabilities, who are between the ages of three and 22 and have not graduated from high school with a regular diploma, are entitled to a free, appropriate public education.

(b) The State Board of Education shall adopt rules consistent with applicable state and federal law to implement this chapter.

(2) The rules adopted by the state board shall include the following:

(a) appropriate and timely identification of students with disabilities;

(b) diagnosis, evaluation, and classification by qualified personnel;

(c) standards for classes and services;

(d) provision for multidistrict programs;

(e) provision for delivery of service responsibilities;

(f) certification and qualifications for instructional staff; and

(g) services for dual enrollment students attending public school on a part-time basis under Section 53A-11-102.5.

(3)(a) The state board shall have general control and supervision over all educational programs for students within the state who have disabilities.

(b) Those programs must comply with rules adopted by the state board under this section.

(4) The state superintendent of public instruction shall enforce this chapter.

**2000**

**53A-15-302. State director of special education - Qualifications - Duties.**

(1) The State Board of Education shall appoint a state director of special education, who shall be qualified and experienced in the area of special education.

(2) The state director has the following duties and responsibilities:

(a) to assist the state board and state superintendent of public instruction in performing their duties under this chapter:

(b) to encourage and assist school districts and other authorized public agencies in the organization of programs for students with disabilities;

(c) to provide general supervision over all public programs offered through a public school, public agency, public institution, or private agency for students with disabilities;

(d) To cooperate with private schools and other private agencies concerned with educating and training students with disabilities; and

(e) to coordinate all stat programs for students with disabilities.

**1992**

**53A-15-303. School district responsibility - Reimbursement of costs - Other programs.**

(1)(a) Each school district shall provide, either singly or in cooperation with other school districts or public institutions, a free, appropriate education program for all students with disabilities who are residents of the district.

(b) The program shall include necessary special facilities, instruction, and education-related services.

(c) The costs of a district's program, or a district's share of a joint program, shall be paid from district funds.

(2) School districts that provide special education services under this chapter in accordance with applicable rules of the State Board of Education shall receive reimbursement from the board under Title 53A, Chapter 17a, Minimum School Program Act and other applicable laws.

(3)(a) A school district may, singly or in cooperation with other public entities, provide education and training for persons with disabilities who are younger than three or older than 21.

(b) The cost of such a program may be paid from fees, contributions, and other funds received by the district for support of the program, but may not be paid from public education funds.

**1992**

**53A-15-303.5. Participation of students with a disability in extracurricular activities.**

(1) A student with a disability may not be denied the opportunity of participating in public school programs or extracurricular activities solely because of the student's age, unless the participation threatens the health or safety of the student.

(2) The school district in cooperation with the Utah Department of Health shall establish criteria used to determine the health and safety factor.

(3) Subsection (1) applies to a student who:

(a) has not graduated from high school with a regular diploma; and

(b) is under the age of 20, if participation is recommended by the student's individualized education program team.

**2000**

**53A-15-304. Services provided by Department of Health.**

The Department of Health shall provide diagnostic and evaluation services, which are required by state or federal law but are not typically otherwise provided by school districts, to students with disabilities.

**1992**

**53A-15-304.5. Special education assessments for children in the custody of the Division of Child and Family Services.**

Each school district shall provide an initial special education assessment for children who enter the custody of the Division of Child and Family Services, upon request by that division, for children whose school records indicate that they may have disabilities requiring special education services. The assessment shall be conducted within 30 days of the request by the Division of Child and Family Services.

**1996**

**53A-15-305. Resolution of disputes in special education - Hearing request - Timelines - Levels - Appeal process - Recovery of costs.**

(1) The Legislature finds that it is in the best interest of students with disabilities to provide for a

prompt and fair final resolution of disputes which may arise over educational programs and rights and responsibilities of students with disabilities, their parents, and the public schools.

(2) Therefore, the State Board of Education shall adopt rules meeting the requirements of 20 U.S.C. Section 1415 governing the establishment and maintenance of procedural safeguards for students with disabilities and their parents or guardians as to the provision of free, appropriate public education to those students.

(3) The timelines established by the board shall provide adequate time to address and resolve disputes without unnecessarily disrupting or delaying the provision of free, appropriate public education for students with disabilities.

(4) Prior to seeking a hearing or other formal proceedings, the parties to a dispute under this section shall make a good faith effort to resolve the dispute informally at the school building level.

(5)(a) If the dispute is not resolved under Subsection (4), a party may request a due process hearing.

(b) The hearing shall be conducted under rules adopted by the board in accordance with 20 U.S.C. Section 1415.

(6)(a) A party to the hearing may appeal the decision issued under Subsection (5) to a court of competent jurisdiction under 20 U.S.C. Section 1415(e).

(b) The party must file the judicial appeal within 30 days after issuance of the due process hearing decision.

(7) If the parties fail to reach agreement on payment of attorney fees, then a party seeking recovery of attorney fees under 20 U.S.C. Section 1415(e) for a special education administrative action shall file a court action within 30 days after issuance of a decision under Subsection (5).

**2000**



# **APPENDIX B**

## **UTAH EDUCATOR LICENSE INFORMATION**

# UTAH

## EDUCATOR LICENSE INFORMATION

### LICENSING AGENCY

Utah State Office of Education

250 East 500 South

Salt Lake City, Utah 84111

Phone: (801) 538-7740

FAX: (801) 538-7973

Web Site: [www.usoe.k12.ut.us/cert/](http://www.usoe.k12.ut.us/cert/)

### DOCUMENTS REQUIRED FOR APPLICATION

Application; evaluation fee (\$15); official transcripts; copies of certificates or licenses issued by any other jurisdiction; verification of experience as an educator; and recommendation from most recent education employer. If the application is approved, two fingerprint cards, background check fee (\$60), and license issuance fee (\$15).

### CLASSIFICATION OF LICENSES

Utah issues a Utah Professional Educator License with four license classes reflecting preparation and experience, each of which must include an area of concentration [Early Childhood K-3, Elementary 1-8, Middle, Secondary 6-12, Administrative/Supervisory, Library Media, School Counselor, School Psychologist, School Social Worker, Special Education K-12, Special Education (Birth-Age 5), Communication Disorders/Audiology, or Communication Disorders/Speech Pathology] and may also bear endorsements relating to subjects or specific assignments (e.g., Biology, ESL, Hearing or Visually Impaired, Mild/Moderate, Severe, or Spanish). The classes are as follows:

### STAGES AND TITLES OF TEACHING CERTIFICATES

#### A. Letter of Authorization

- **\*Preparation and Experience**

Letter of Authorization is a temporary license issued to meet special needs at the request of higher education institution or local school authorities, (e.g., student teaching, teacher shortage); requires current enrollment in an educator preparation program outlined in a deficiency plan.

- **Duration**

Valid up to one year.

- **Renewable**  
Annually, not to exceed four years.
- **Renewal Requirements**  
Compliance with deficiency correction plan.

B. **LEVEL I**

- **\*Preparation and Experience**  
**Current employment contract, and one of the following:**
  1. Completion of approved educator preparation program.
  2. Completion of an approved alternative preparation program.
  3. Eligibility under NASDTEC Interstate Contract. Contract must be in a position covered by the license sought, at least one-half time, and with a school approved by the State Board of Education or accredited by an organization recognized by the Board.
- **Duration**  
Valid for three years.
- **Renewable**  
Up to six years.
- **Renewal Requirements**  
One hundred professional development points and verification of at least three years of successful employment after receiving a Level I license.

C. **LEVEL II**

- **\*Preparation and Experience**
  1. Verification of three years of successful performance as an educator after receiving a Level I license, and recommendation for Level II by employing school district.
  2. Completion of courses in computer literacy, reading instruction, and teaching students with disabilities.
  3. Compliance with special requirements. This course completion requirement is applicable only to teachers; coursework requirement may be met through demonstrated competence.  
  
Special requirements may apply to areas of concentration (e.g., administration, counseling, grade levels), endorsements (at least 16 semester hours in a content area, or specialties (subject specific but fewer than 16 semester hours completed).
- **Duration**  
Valid for five years.

- **Renewable**  
No limit on renewal.
- **Renewal Requirements**
  1. Same as Level I.
  2. Additional professional development points required if educator has not worked professionally at least half-time for three years during the previous period of license validity.

D. **LEVEL III**

- **\*Preparation and Experience**

**Eligibility to hold a Level II license, and one of the following in the educator's field of practice:**

1. Doctor's degree.
2. National Board for Professional Teaching Certification.

- **Duration**

Valid for seven years.

- **Renewable**

No limit on renewal.

- **Renewal Requirements**

Doctorate same as Level II, NBPTS holders renewal of that certificate, plus three years of successful employment or combination of employment and professional development.

\*Except for student teachers and applied technology teachers, all licensed educators must hold a bachelor's degree or higher from an institution approved by the State Board of Education or accredited by an organization recognized by the Board. Applied technology teachers may be licensed based upon employment experience, education, or a combination of both. Absent specific case-by-case approval, education, professional development credits, and employment submitted to obtain a new license must have been completed within the preceding five years.

***NEW SPECIAL EDUCATION RULE:***

**QUALIFICATION STANDARDS  
FOR  
PARAEDUCATORS IN SPECIAL EDUCATION**

Under the supervision of licensed and/or certified personnel, paraeducators shall participate within clearly defined roles to assist those personnel in providing appropriate education and related services for students with disabilities.

School districts shall define and clarify specific job roles and responsibilities for paraeducators. The roles and responsibilities for paraeducators serving as “aides” and “instructional assistants” or any other job title used in a school district shall address how paraeducators assist in the following areas related to the individual job description:

1. *Data collection* for determining strengths and weaknesses.
2. *Implementation* of instruction and curriculum.
3. *Behavior management*.
4. *Monitoring* of student progress.

# **APPENDIX C**

## **ELEMENTARY AND SECONDARY PROGRAM OF STUDIES AND HIGH SCHOOL GRADUATION**

**R277. Education Administration.**

**R277-700. The Elementary and Secondary School Core Curriculum and High School Graduation Requirements.**

**R277-700-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "IEP" means individual education program.
- C. "Special assignment teacher" means a teacher assigned to:
  - (1) alternative school settings with self-contained classrooms in which the teacher must teach several subjects;
  - (2) teach homebound students with the expectation that several subjects will be covered by the same teacher; or
  - (3) necessarily existent small or rural schools with limited faculty and enrollment in which teachers must teach more than three core subjects.
- D. "Secondary school experience" means grades 7-12.
- E. "Accredited" means evaluated and approved under the Standards for Accreditation of the Northwest Association of Schools and Colleges or the accreditation standards of the board, available from the USOE Accreditation Specialist.
- F. "USOE" means the Utah State Office of Education.
- G. "Demonstrated proficiency" means a level of subject mastery as determined by the school district and may include such methods as tests, interviews, teacher evaluations, reports, and written work.

**R177-700-2. Authority and Purpose.**

- A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision of the public education system in the Board, Section 53A-1-402(1) (b) and (c) which directs the Board to make rules regarding competency levels, graduation requirements, curriculum, and instruction requirements, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.
- B. The purpose of this rule is to specify the minimum core curriculum for the public schools and high school graduation requirements.

**R277-700-3. General Requirements - Course Standards.**

The Board establishes minimum course description standards and objectives for each course in the required general core, which is commonly referred to as The Core Curriculum. Course descriptions for required and elective courses are developed cooperatively by local school districts and the Utah State Office of Education. The descriptions shall contain mastery criteria for the course and shall stress mastery of the criteria rather than completion of predetermined time allotments for subjects. Implementation and assessment procedures are the responsibility of local school districts.

**R277-700-4. General Requirements - Teacher Qualifications.**

Teachers may not be assigned to teach any course unless, for the subject area to which they are assigned, they hold a current Utah teaching certificate endorsed in the subject area, have completed an undergraduate or graduate major or minor in the

subject area, have completed a Board approved in-service program, or have demonstrated competency in the subject area.

**R277-700-5. General Requirements - Special Assignment Teachers.**

A. Special assignment teachers must hold a Basic or Standard Certificate with endorsement(s) for the courses(s) which they are assigned to teach. In addition, personnel must have completed at least nine quarter hours of state approved college of in-service course work in each of the subject areas in which they are assigned.

B. Special assignment teachers are temporarily authorized for the duration of their special assignment and do not receive a permanent endorsement for the subject area until they have completed the equivalent of a subject matter minor, at least 24 quarter hours of state approved college course work in the field, or have been declared competent to teach the subject by the Utah State Office of Education Committee on Demonstrated Competency.

**R277-700-6. General Requirements - Unit of Credit.**

A. A unit of credit or fraction thereof shall be given upon satisfactory completion of a course or learning experience in compliance with state course standards. Students also may complete a course on a performance basis in which case assessment of mastery will be the responsibility of the local boards of education. Credit can be awarded only once for a specific required course with the same content during the secondary school experience.

B. A district may grant credit from among the following:

- (1) successful completion of a course;
  - (a) offered by the district;
  - (b) approved by the district taken outside of the regular school day or school year;
  - (c) approved by the district for concurrent enrollment and offered by an accredited post-secondary institution; or
  - (d) offered by correspondence or extension that is approved and accredited by the district; or
- (2) demonstrated proficiency by way of a district approved
  - (a) test developed by the state or district;
  - (b) standardized test;
  - (c) performance appraisal; or
  - (d) portfolio; or
- (3) successful completion or demonstrated proficiency in an experimental program approved by the district.

**R277-700-7. General Requirements - Instructional Time.**

School districts shall organize flexible time blocks for instruction which accommodate outcome\_based curriculum. To help the Board keep apprised of instructional time variations, districts shall submit their instructional time schedule to the Utah State Office of Education for approval.

**R277-700-8. General Requirements - Student Education Plan.**

A student education plan is cooperatively developed by the student, the student's parents, and designated school personnel. This plan is guided by general requirements and individual student



interests and goals. It is formally reviewed, at least, at the beginning of grade one, at the end of grades three and six, and annually thereafter. Each student's high school plan shall identify an area of concentration, which may be as many as four to five units, in a cluster related to the student's post-secondary goal.

**R277-700-9. General Requirements - Diploma.**

In Utah's public schools, a high school diploma is granted to a student who has met Board curriculum requirements and any additional requirements of the local school district.

**R277-700-10. Requirements for Elementary Education.**

A. The Board shall establish standards for elementary education which include the identification of a general core curriculum. Implementation and formal assessment of student mastery of the general core curriculum are the responsibilities of the local boards of education. At a minimum, formal assessment shall occur during or at the completion of grades three and six. Informal assessment should occur on a frequent ongoing basis to ensure continual student progress. Provision for remediation for all students who do not achieve mastery is required.

B. Required Elementary Core Curriculum:

TABLE

REQUIRED ELEMENTARY CORE CURRICULUM  
GRADES K-6

GENERAL CORE	OPTIONS	
LANGUAGE ARTS	SOCIAL STUDIES	FOREIGN LANGUAGE
	Introductory Citizenship	
	Principles and Practices	
	ARTS	
MATHEMATICS	RESPONSIBLE HEALTHY LIFESTYLES	
SCIENCE	INFORMATION TECHNOLOGY	
LIBRARY MEDIA		

C. All handicapped students are required to demonstrate mastery of the core curriculum. If a student's handicapping condition precludes the successful demonstration of mastery, the IEP team, on a case basis, may exempt the student or modify the mastery demonstration to accommodate the student's handicap.

**R277-700-11. Middle and High School Requirements.**

A. The Board provides general direction and standards in secondary education. Students in grades seven and eight must earn a minimum of 12 units of credit. Students in grades nine through twelve must earn a minimum of 24 units of credit. Districts may require additional units of credit. Formal assessment of student mastery of the general core courses shall occur as a minimum during

or at the completion of grades eight, ten, and twelve. Implementation and assessment of student mastery of the core courses are the responsibility of the local board.

B. Middle Education Core Curriculum:

TABLE

MIDDLE EDUCATION CORE CURRICULUM  
GRADES 7-8 12 UNITS OF CREDIT REQUIRED

GENERAL CORE - 10.5 Units PLUS REQUIRED ELECTIVES 1.5

SUBJECT AREAS REQUIREMENTS

Language Arts	2.0	
Mathematics	2.0	
Science	1.5	
Social Studies	1.5	
The Arts	1.0	
Information Technology	Credit Optional	
Responsible Healthy Lifestyles	1.5	(Consists of 1.0 Physical Education and .5 Health Education)
Applied Technology Education	1.0	
Technology, Life and Careers		
Library Media Skills Integrated into Subject Areas		

C. High School Core Curriculum:

(1) Required credits:

TABLE

HIGH SCHOOL CORE CURRICULUM  
GRADES 9-12 24 UNITS OF CREDIT REQUIRED

GENERAL CORE - 14.5 Units PLUS REQUIRED ELECTIVES 9.5

SUBJECT AREAS REQUIREMENTS

Language Arts	3.0	
Mathematics	2.0	
Science	2.0	
Information Technology	Credit Optional	
Social Studies	3.0	
Arts	1.5	
Responsible Healthy Lifestyles	2.0	(Consists of 1.5 Physical Education and .5 Health Education)
Applied Technology Education	1.0	
Occupational Preparation		

Library Media Skills Integrated into Subject Areas  
SELECTED ELECTIVES 9.5

(2) Any state-approved applied technology course, or the applied technology core course fulfills the applied technology education requirements.

(3) Selected electives units of credit provide a means for specialization related to student interest and post secondary goals.

(a) College Entry Cluster:

Foreign Language: 2.0 units of credit

Mathematics: 1.0 units of credit

English: 1.0 units of credit

Science: 1.0 units of credit

Electives: 4.5 units of credit

(b) Applied Technology/Job Entry Clusters:

Select one:

Technical Emphasis: 4.0 units of credit

Vocational Emphasis: 5.0 units of credit

Computer Science: .5 units of credit

(c) Electives: 4.0 - 5.0 units of credit

D. Informational Technology standards in the Middle Education and High School core curriculum may be taught either by integrating them into other areas of the curriculum or in a specific class. Integration requires the district to submit a plan detailing at what level and in which class each standard will be taught. Districts establishing a specific class may offer .5 units of credit.

E. All handicapped students are required to demonstrate mastery of the courses in the Middle Education and High School general core. If a student's handicapping condition precludes the successful demonstration of mastery, the IEP team, on a case by case basis, may exempt the student or modify the mastery demonstration to accommodate the student's handicap.

**KEY: curricula**

**1994**

**Notice of Continuation January 14, 1998**

**Art X Sec 3**

**53A-1-402(1)(b)**

**53A-1-401(3)**

# **APPENDIX D**

## **COORDINATING COUNCIL FOR PERSONS WITH DISABILITIES**

Code-Co's Internet Access to Utah Law: <http://www.code-co.com>

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[\[Home\]](#) [\[Utah Adv.Rep.\]](#) [\[Utah Code\]](#) [\[Legislature\]](#) [\[Ut. Adm. Code\]](#) [\[Courts\]](#) [\[CodeCo\]](#) [\[Subscribe\]](#)

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**(Utah Code, 1999 Edition)**

[\[Utah Code Table of Contents\]](#)

[\[TITLE 62a. Table of Contents\]](#)

**(Title 62A. Utah Human Services Code)**

## **Chapter 5a. Coordinating Council for Persons with Disabilities**

**62A-5a-101 Policy statement.**

**62A-5a-102 Definitions.**

**62A-5a-103 Coordinating Council for Persons with Disabilities - Creation - Membership - Expenses.**

**62A-5a-104 Powers of council.**

**62A-5a-105 Coordination of services for school-age children.**

**61A-5a-101 Policy statements.**

It is the policy of this state that all agencies that provide services to persons with disabilities:

(1) coordinate and ensure that services and supports are provided in a cost-effective manner. It is the intent of the Legislature that services and supports provided under this chapter be coordinated to meet the individual needs of persons with disabilities; and

(2) whenever possible, regard an individual's personal choices concerning services and supports that are best suited to his individual needs and that promote his independence, productivity, and integration in community life.

1991

**62A-5a-102 Definitions.**

As used in this chapter:

(1) "Council" means the Coordinating Council for Persons with Disabilities.

(2) "State agencies" means:

(a) the Division Services for People with Disabilities and the Division of Mental Health, within the Department of Human Services;

(b) the Division of Health Care Financing within the Department of Health

(c) family health services programs established under Title 26, Chapter 10, Family Health Services, operated by the Department of Health;

(d) the Utah State Office of Rehabilitation; and

(e) special education programs operated by the State office of Education and local school districts under Title 53A, Chapter 15, Part 3, Education of Children with Disabilities.

1996

**62A-5a-103 Coordinating Council for Persons with Disabilities - Creation - Membership - Expenses.**

(1) There is created the Coordinating Council for Persons with Disabilities.

(2) The council shall consist of:

(a) the director of the Division of Services for People with Disabilities within the Department of Human Services, or his designee;

(b) the director of family health services programs, appointed under Section 26-10-3, or his designee;

(c) the executive director of the Utah State Office of Rehabilitation, or his designee;

(d) the state director of special education, or his designee;

(e) the director of the Division of Health Care Financing within the Department of Health, or his designee;

(f) the director of the Division of Mental Health within the Department of Human Services, or his designee.;

(g) the superintendent of Schools for the Deaf and Blind, or his designee; and

(h) a person with a disability, a family member of a person with a disability, or an advocate for persons with disabilities, appointed by the members listed in Subsections (a) through (g).

(3) (a) The council shall annually elect a chair from its membership.

(b) Five members of the council for a quorum.

(4) (a) State government officer and employee members who do not receive salary, per diem, or expenses from their agency for their service may receive per diem and expenses incurred in the performance of their official duties from the council at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(b) State government officer and employee members may decline to receive per diem and expenses for their service.

1997

**62A-5a-104 Powers of council.**

(1) The council has authority, after local or individual efforts have failed, including, with regard to persons under 22 years of age, actions by local interagency councils established under Section 63-75-5.7, to:

(a) coordinate the appropriate transition of persons with disabilities who receive services and support from one state agency to receive services and support from another state agency;

(b) coordinate policies governing the provision of services and support for persons with disabilities by state agencies; and

(c) consider issues regarding eligibility for services and support and, where possible, develop uniform eligibility standards for state agencies.

(2) The council may receive appropriations from the Legislature to purchase services and supports for persons with disabilities the council deems appropriate.

1996

#### **62A-5a-105 Coordination of services for school-age children.**

(1) Within appropriations authorized by the Legislature, the state director of special education, the executive director of the Utah State Office of Rehabilitation, the executive director of the Department of Human Services, and the family health services director within the Department of Health, or their designees, and the affected local school district shall cooperatively develop a single coordinated education program, treatment services, and individual and family supports for students entitled to a free appropriate education under Title 53A, Chapter 15, Part 3, Education of Children with Disabilities, who also require services from the Department of Human Services, the Department of Health, or the Utah State Office of Rehabilitation.

(2) Distribution of costs for services and supports described in Subsection (1) shall be determined through a process established by the State Board of Education, The Department of Human Services, and the Department of Health.

1996

**Utah Code QuickLinks:** [\[Utah Code Main Pg\]](#) [\[Search\]](#) [\[TOP of file\]](#)

#### **Code-Co QuickLinks:**

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# **APPENDIX E**

## **VOCATIONAL REHABILITATION SERVICES**



# **VOCATIONAL REHABILITATION SERVICES**

## **INTRODUCTION**

The Utah State Board of Education/State Board of Applied Technology Education is designated by Utah law as the single state agency responsible for the administration, supervision, and delivery of the state program rehabilitation services. By this authority and through its chief executive officer, the Board administers the Utah State Office of Rehabilitation.

One of the major programs under this office is the Vocational Rehabilitation Program.

## **MISSION STATEMENT**

To assist eligible individuals with disabilities in preparing for and obtaining employment.

## **ELIGIBILITY**

Eligibility for vocational rehabilitation services depends upon the individual having (A) a physical or mental impairment which results in a substantial impediment to employment, and (B) requires vocational rehabilitation services to prepare for, enter, engage in, or retain gainful employment.

## **REHABILITATION PROCESS**

- The school refers the student to a rehabilitation counselor.

The counselor:

- Explains program to student and/or parents.
- Obtains application and needed diagnostic information.
- Determines eligibility or refers to other appropriate services.
- If eligible, develops an Individualized Plan for Employment (IEP) based on individual needs.
- Works with appropriate school staff and community services to accomplish IEP goals.
- Assists the individual in obtaining job placement.

## **EXAMPLES OF SERVICE**

- Diagnostic and evaluation procedures.
- Counseling and guidance.
- Medical, surgical, and therapeutic care and treatment.
- Education and training.
- Prosthetic appliances and devices
- Transportation
- Other goods and services in support of IPE goals.
- Job placement and follow-up.

## **VOCATIONAL REHABILITATION OFFICES**

(See listing page B-4.)

## **TRANSITION**

**Authority [P.L. 102-569, Sec. 101 (a)(24)].**

The Division of Rehabilitation Services (DRS) has always supported the concept of transition from school to employment. Special efforts are made to maintain relationships between DRS and educational and training institutions in cooperative programming for students (clients) with disabilities. Cooperative agreements have been developed and liaison personnel assigned to the major institutions identified as having educational responsibilities, including every high school in the state.

Our goal is to provide individuals with disabilities optimum transition opportunities in a timely manner from education to work, and to assure an active outreach effort.

The division plans to:

1. Revise and/or update existing cooperative agreements with each of the forty (40) public school districts in Utah (see example, Cooperative Agreement page 6).

2. Assign a rehabilitation counselor as liaison to each secondary school located in their area to work with special education teachers in expanding efforts to enhance the transition process for students/clients.
3. Schedule and provide orientation sessions with special education teachers regarding available rehabilitation services, and implement cooperative agreements with emphasis placed on early identification and involvement with IEP/IPE planning and coordination.
4. The rehabilitation counselor will be available as a consultant and resource person for the development of school plans for students with disabilities that involve transition.
5. Provide a setting in which local problems and/or needs in serving students with disabilities can be identified and solved through the participation and cooperation of the student/client, parent, education, rehabilitation, and other related agencies.

## REHABILITATION OFFICE LOCATIONS

### UTAH STATE OFFICE REHABILITATION DIVISION OF REHABILITATION SERVICES

250 East 500 South  
Salt Lake City, Utah 84111  
(801) 538-7530      Voice/TDD

#### DISTRICT OFFICES

##### **NORTHERN UTAH DISTRICT**

150 North Washington Blvd.  
Ogden, Utah 84404  
(801) 621-4672---800-560-4672  
Voice/TDD

##### **BRIGHAM CITY OFFICE**

695 South Main, Suite #4  
Brigham City, Utah 84302  
(801) 734-9408---800-559-9408  
Voice/TDD

##### **LOGAN OFFICE**

115 West Golf Course Road #D  
Logan, UT 84321-5984  
(435) 787-3481---800-560-9766  
Voice/TDD

##### **OGDEN-DAVIS DISTRICT**

1140 36th Street #150  
Ogden, Utah 84403-2020  
(801) 395-7020  
Voice/TDD

##### **FARMINGTON OFFICE**

40 North 100 East  
Farmington, Utah 84025-3522  
(801) 451-9449  
Voice/TDD

##### **LAYTON OFFICE**

294 North 400 West, Suite A  
Layton, UT 840410-1344  
(801) 776-5951  
Voice/TDD

##### **SALT LAKE DOWNTOWN DISTRICT**

660 South 200 East, Suite 400  
Salt Lake City, Utah 84111-3844  
(801) 238-4560  
Voice/TDD

##### **REDWOOD OFFICE**

1575 West 500 South  
Salt lake City, Utah 84104  
(801) 887-9500  
Voice/TDD

##### **VALLEY WEST DISTRICT**

2964 West 4700 South, Suite 102  
Salt Lake City, Utah 84118-2558  
(801) 957-8200  
Voice/TDD

##### **SOUTH SALT LAKE DISTRICT**

5020 South State Street  
Salt Lake City, UT 84107-4897  
(801) 267-5600---800-625-7519  
Voice/TDD

##### **SOUTHERN UTAH DISTRICT**

410 North Main/P.O. Box 748  
Cedar City, Utah 84721-2642  
(435) 586-9995---800-281-9945  
Voice/TDD

##### **DELTA OFFICE**

520 East Topaz Blvd., #107  
Delta, Utah 84624-4106  
(435) 864-2509---800-531-9914  
Voice/TDD

**TOOELE OFFICE**

161 North Main  
Tooele, Utah 84074\_-141  
(801) 882-1086---800-734-1086

**PROVO DISTRICT**

150 East Center, Suite 3300  
Provo, Utah 84606-3157  
(801) 374-7724---800-662-6539  
Voice/TDD

**PAYSON OFFICE**

914 East 100 North  
Payson, Utah 84651-1606  
(801) 465-5380/TDD 465-5382

**EASTERN UTAH DISTRICT**

662 West Price River Drive  
Price, Utah 84501-2839  
(435) 637-7734---1-800-491-7734  
Voice/TDD

**VERNAL OFFICE**

1680 West Hwy 40, #106D  
Vernal, Utah 84078-4135  
(435) 789-0273---1-800-286-0273  
Voice/TDD

**ROOSEVELT OFFICE**

1100 East Lagoon  
Roosevelt, Utah 84066-3099  
(435) 722-3563  
Voice/TDD

**BLANDING OFFICE**

212 North Main Street  
Blanding, Utah 84511-3600  
(435) 678-2511---800-531-9912  
Voice/TDD

**MOAB OFFICE**

125 West 200 South  
Moab, Utah 84532  
(435) 259-4635  
Voice/TDD

**RICHFIELD OFFICE**

1100 South U.S. Hwy 89  
Richfield, Utah 84701-3103  
(435) 896-1470---800-953-6479  
Voice/TDD

**ST. GEORGE OFFICE**

301 East Tabernacle, #203/Box 699  
St. George, Utah 84770  
(435) 673-5091---1-800-281-5091  
Voice/TDD

**MANTI OFFICE**

50 South Main, #21  
Manti, Utah 84642-1349  
(435) 835-0750---800-531-9913

**VOCATIONAL EVALUATION SERVICES**

1595 West 500 South  
Salt Lake City, Utah 84104  
(801) 887-9515  
Voice/TDD

**OGDEN VOCATIONAL EVALUATION**

150 North Washington Blvd.  
Ogden, Utah 84404-3952  
(801) 395-6310  
Voice/TDD

**PROVO VOCATIONAL EVALUATION SVCS**

150 East Center, 3300  
Provo, Utah 84606-3157  
(801) 374-7724---800-662-6539  
Voice/TDD

**UTAH CTR FOR ASSISTIVE TECHNOLOGY**

1595 West 500 South  
Salt Lake City, Utah 84104  
(801) 887-9500---888-866-5550  
Voice/TDD

# COOPERATIVE AGREEMENT

Between the

Division of Rehabilitation Services  
Utah State Office of Rehabilitation

and the

\_\_\_\_\_ School District

## **STATEMENT OF PHILOSOPHY AND PURPOSE**

The purpose of this Cooperative Agreement is to implement and strengthen a transitional planning process that will assist individuals with disabilities to move from education to community services and/or employment. In support of this purpose, this Cooperative Agreement is entered into between the Utah State Division of Rehabilitation Services and the \_\_\_\_\_ School District.

## **ROLE AND FUNCTION OF EACH ORGANIZATION**

1. Division of Rehabilitation Services: DRS is the public agency primarily responsible to provide vocational rehabilitation services for individuals with disabilities. Basic services and responsibilities to the schools include:
  - a. Act as an information and referral source and determine the eligibility of students with disabilities for vocational rehabilitation services.
  - b. Provide consultation to the schools regarding vocational rehabilitation services, transitional planning, environmental and architectural barriers, and special needs of the students with disabilities to include: medical, psychological, vocational, and educational.
  - c. Assign the vocational rehabilitation counselor as a team member to help develop the eligible students' Individual Education Plan (IEP) and the Division of Rehabilitation's Individualized Plan for Employment (IPE).
  - d. Select eligible students with disabilities for work evaluation/work adjustment and work training programs.
  - e. Provide such support services as needed to assure that eligible students with disabilities approaching an employable age are adequately prepared to bridge the gap between the public schools and employment.
  - f. Assign a vocational rehabilitation employee to serve on a staff management basis to the local high school district to help coordinate services for students with disabilities. This person(s) will appear on the high school and school district organizational chart.

2. \_\_\_\_\_ High School
  - a. Aid in information and referral services of potential students with disabilities.
  - b. Formalize liaison personnel on school district organizational charts.
  - c. Make available individual student records who have been referred or who are participating in the vocational rehabilitation program.
  - d. Make available medical, psychological, social, or vocational tests and/or reports of students who have been referred or who are participating in the vocational rehabilitation program.
  - e. Aid in the orienting and education of parents, teachers, students, and school support staff of available services.
  - f. Assign a school employee to serve on a staff management basis to the local vocational rehabilitation organization to help coordinate services for students with disabilities. The person(s) will appear on the rehabilitation organizational chart.
  - g. The school will assign a representative from Vocational Education, Special Education, and other appropriate areas, to be members of the student's IEP/IPE team as needed.

### **JOINT RESPONSIBILITIES**

1. Each organization has the responsibility for interpreting, not only its own programs to the local community, but also for clarifying relationships between the organizations in this agreement and in areas of responsibility for serving individuals with disabilities.
2. Both organizations shall observe the propriety right of students in releasing confidential information, and only that type of information which seems pertinent to the rehabilitation of a student shall be divulged. Any confidential information exchanges between organizations must be kept in strict confidence. Stipulations of the Federal Privacy Act/GRAMA shall be observed.
3. Parties to this agreement shall comply with Title VI of the 1964 Civil Rights Act. No person shall be excluded from participation, denied any benefits or services, or subjected to discrimination on the basis of race, color, sex, national origin, or disability.
4. Periodic evaluations will be conducted by appointed representatives of each organization as to the adequacy of procedures, number of student referrals, exchange of information, and other specifics on which to determine the effectiveness of cooperative efforts and to recommend improvements in the working relationships between the two organizations.

5. This agreement adheres to the Utah State Office of Education policy that all students with disabilities be provided a free appropriate education and other necessary related services so that they can develop to their maximum potential as productive and contributing members of society.

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Representing Utah State Office  
of Education

---

Representing School District

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Representing Division of  
Rehabilitation Services

---

Representing High School

---

Representing Local Rehabilitation  
Services District Office

---

Date

---

Date





UTAH STATE OFFICE  
OF EDUCATION  
250 EAST 500 SOUTH  
SALT LAKE CITY  
UTAH 84111



STEVEN O. LAING, EdD  
STATE SUPERINTENDENT  
OF PUBLIC INSTRUCTION



(back cover)